राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 25 अप्रैल, 2018 / 05 वैशाख, 1940

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 12th March, 2018

No. HHC/Admn. 3(400)/95-II.—09 days commuted leave on and with effect from 05-02-2018 to 13-02-2018 with permission to prefix Second Saturday, Sunday, 1st batch special causal leave and Sunday commencing from 13-01-2018 to 04-02-2018 and suffix Gazetted Holiday

on 14-02-2018, is hereby sanctioned, *ex-post-facto,* in favour of Shri Lal Singh Pathania, Secretary of this Registry.

Certified that Shri Lal Singh Pathania has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Lal Singh Pathania would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 11th April, 2018

No. HHC/Admn. 3(179)/82-I.—13 days earned leave *w.e.f.* 16-04-2018 to 28-04-2018 with permission to prefix Second Saturday & Sunday falling on 14th & 15th April, 2018 and suffix Sunday & Gazetted Holiday falling on 29th & 30th April, 2018 is hereby sanctioned in favour of Smt. Sudesh Kumari, Court Master of this Registry.

Certified that Smt. Sudesh Kumari is likely to join the same post and at the same station from where she proceeds on leave after the expiry of the above leave period.

Certified that Smt. Sudesh Kumari would have continued to officiate the same post of Court Master but for her proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 10th April, 2018

No. HHC/Admn. 3(399)/95-I.—06 days earned leave *w.e.f.* 12-02-2018 to 17-02-2018 with permission to prefix Second Saturday and Sunday on 10th & 11th February, 2018 and suffix Sunday on 18-02-2018 is hereby sanctioned, *ex-post-facto,* in favour of Shri Beer Singh Sharma, Secretary of this Registry.

Certified that Shri Beer Singh Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Beer Singh Sharma would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 9th April, 2018

No. HHC/Estt. 3(516)/2001-I.—40 days earned leave *w.e.f.* 04-12-2017 to 12-01-2018 with permission to prefix Sunday on 03-12-2017 and suffix Second Saturday, Sundays and special casual leave 1st batch from 13-01-2018 to 04-02-2018 is hereby sanctioned, *ex-post-facto,* in favour of Shri Tilak Raj Sharma, Court Master of this Registry.

Certified that Shri Tilak Raj Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Tilak Raj Sharma would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 9th April, 2018

No. HHC/ Estt.3(415)/95-I.—10 days earned leave *w.e.f.* 12-03-2018 to 21-03-2018 with permission to prefix Second Saturday and Sunday on 10th & 11th March, 2018 is hereby sanctioned, *ex-post-facto,* in favour of Shri Sunil Kumar Sharma, Secretary of this Registry.

Certified that Shri Sunil Kumar Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Sunil Kumar Sharma would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 6th April, 2018

No. HHC/Admn. 3(179)/82-I.—06 days commuted leave *w.e.f.* 15-01-2018 to 20-01-2018 with permission to prefix Second Saturday and Sunday on 13th & 14th January, 2018 and suffix Sunday on 21-01-2018 is hereby sanctioned, *ex-post-facto,* in favour of Smt. Sudesh Kumari, Court Master of this Registry.

Certified that Smt. Sudesh Kumari has joined the same post and at the same station from where she had proceeded on leave after the expiry of the above leave period.

Certified that Smt. Sudesh Kumari would have continued to officiate the same post of Court Master but for her proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 10th April, 2018

No. HHC/GAZ/14-375/2016.—Hon'ble the Acting Chief Justice has been pleased to grant 06 days earned leave *w.e.f.* 23-04-2018 to 28-04-2018 with permission to prefix 22-04-2018 being Sunday and suffix 29-04-2018 & 30-04-2018 being Sunday and Gazetted Holiday respectively in favour of Ms. Vibhuti Bahuguna, Civil Judge-*cum*-JMIC, Kandaghat, District Solan, H.P.

Certified that Ms. Vibhuti Bahuguna is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Vibhuti Bahuguna would have continued to hold the post of Civil Judge-*cum*-JMIC, Kandaghat, District Solan, H.P. but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 13th April, 2018

No. HHC/GAZ/14-363/2015.—Hon'ble the Acting Chief Justice has been pleased to grant 26 days earned leave *w.e.f.* 16-04-2018 to 11-05-2018 with permission to prefix 13th, 14th & 15th April, 2018 being Local Holiday, Second Saturday & Sunday and suffix 12th & 13th May, 2018 being Second Saturday & Sunday in favour of Sh. R. Mihul Sharma, Civil Judge-*cum*-JMIC (III), Una, H.P.

Certified that Sh. R. Mihul Sharma is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. R. Mihul Sharma would have continued to hold the post of Civil Judge-*cum*-JMIC (III), Una, H.P. but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 13th April, 2018

No. HHC/GAZ/14-292/2006.—Hon'ble the Acting Chief Justice has been pleased to grant 06 days earned leave *w.e.f.* 16-04-2018 to 21-04-2018 with permission to prefix local holiday, Second Saturday & Sunday falling on 13th, 14th & 15th April, 2018 in favour of Sh. Dhiru Thakur, Senior Civil Judge-*cum*-ACJM (I), Kangra, H.P.

Certified that Sh. Dhiru Thakur is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Sh. Dhiru Thakur would have continued to hold the post of Senior Civil Judge-cum-ACJM (I), Kangra, H.P. but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA - 171 001

NOTIFICATION

Shimla the 13th April, 2018

No. HHC/Admn.6 (23)/74-XVI.—Hon'ble the Acting Chief Justice in exercise of the powers vested in him under Rule 2(32) of Chapter 1 of H.P. Financial Rules, 2009, has been pleased to declare the Civil Judge-cum-JMIC (II), Kangra, H.P. as Drawing and Disbursing Officer in respect of the Court of Senior Civil Judge-*cum*-ACJM (I), District Kangra, H.P. and also the Controlling Officer for the purpose of T.A. etc. in respect of establishment attached to the aforesaid court under head "2014–Administration of Justice" during the earned leave period of Sh. Dhiru Thakur, Senior Civil Judge-*cum*-ACJM (I), Kangra, HP *w.e.f.* 16-04-2018 to 21-04-2018 with permission to prefix local holiday, Second Saturday & Sunday falling on 13th, 14th and 15th April, 2018 or till he returns from leave.

By order,
Sd/-
Registrar General.

OFFICE OF DEPUTY COMMISSIONER CHAMBA,
DISTRICT CHAMBA H.P.

NOTIFICATION

Chamba, the 19th April, 2018

No. CBA-Peshi-M-47(6)/2017-1144-1159.—In continuation of this office notification No. CBA-Peshi-M-47(6) /2017-913-927 dated 03-04-2018 the restrictions to ply all kind of vehicles over Baloo Bridge (from both sides) is further extended upto 30th April, 2018. The other regulations notified *vide* above notification shall remain the same.

Sd/-
District Magistrate,
Chamba , Distt. Chamba, H.P.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla,the 20th January, 2018

No. Shram (A) 6-5/2017 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh :—

Sl. No.	Reference/Application	Title	Section
1.	Ref. 87/2009	Pres/Gen. Secy Cosmo Karamchari Sangh *V/s* G.M. Cosmo Ferrites Ltd. Jabli.	10
2.	Ref. 98/2009	Pres/Gen. Secy Cosmo Karamchari Sangh *V/s* G.M. Cosmo Ferrites Ltd. Jabli.	10
3.	Ref. 95/17	Sh. Rakesh Thakur *V/s* M/s Akron India Pvt. Ltd.	10
4.	Ref. 85/17	Hotel Mazdoor Lal Jhanda Union *V/s* M/s A.B. Tools Company Shimla & Anr.	10
5.	Ref. 71/16	Sh. Jitender Singh *V/s* The D.F.O. MIST Chamber Khalini.	10
6.	Ref. 38/07	Sh. Pushpender Kumar & Ors V/s The M.D. M/s Ansysco Parwanoo.	10
7.	Ref. 131/17	Sh. Dinesh Kumar *V/s* M/s Concept Industries	10
8.	Ref. 130/17	Sh. Rakesh Kumar *V/s* M/s Concept Ind. Nalagarh	10
9.	Ref. 177/17	Sh. Prem Chand *V/s* M/s Fujikawa Power Nalagarh	10
10.	Ref. 176/17	Sh. Kuldeep Chand *V/s* M/s Fujikawa Power Nalagarh	10
11.	Ref. 175/17	Sh. Jagdish Kumar *V/s* M/s Fujikawa Power Nalagarh	10
12.	Ref. 173/17	Sh. Jaswinder Singh *V/s* M/s Fujikawa Power Nalagarh	10
13.	Ref.172/17	Sh. Daljeet Singh *V/s* M/s Fujikawa Power Nalagarh	10
14.	Ref. 36/11	Sh. Naginder Chand *V/s* M/s G.M. Technical Solutions Solan & Anr.	10
15.	Ref. 61/14	Sh. Surinder Kumar *V/s* M/s GMP Technical Solutions Solan & Anr.	10
16.	Ref. 63/14	Sh. Lal Chand *V/s* M/s G.M. Technical Solutions Solan & Anr.	10
17.	Ref. 62/14	Sh Raj Kumar *V/s* M/s G.M. Technical Solutions Solan & Anr.	10
18.	Ref. 37/11	Sh. Rafic V/s M/s G.M. Technical Solutions Solan & Anr.	10
19.	Ref. 35/17	Workers Union M/s Landis + Gyr Ltd. Nalagarh	10
20.	App.79/14	Salochna *V/s* Saty Parkash Aggerwal	2-A

21.	App. 80/14	Vijay Kumar *V/s* Satya Parkash M/s SPA Soaps & Surfacants Parwanoo H.P.	2-A

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA.**

1. Ref. No. 87 of 2009
Instituted on 10-11-2009
Decided on 30-12-2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP . . .*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP . . .*Respondent.*

2. Ref. No. 98 of 2009
Instituted on 18-11-2009
Decided on 30-12-2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP. …*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP ...*Respondent.*

References under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vishal Panwar, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

This award shall dispose of the above mentioned consolidated claim petitions filed by the petitioner union arising out of reference no. 87 of 2009 and 98 of 2009, received from the appropriate government, the terms of which are similar and reads as under :

"Whether the Demand Notice dated 1.4.2009 (Copy enclosed) raised by the President/General Secretary, Cosmo Karamchari Sangh (Reg. No.-514), Jabli, District

Solan, H.P., before the management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., is maintainable, legal and justified? If yes, to what benefits the workmen of the factory are entitled to?"

"Whether the dismissal order dated 21.3.2009 of Shri Baldev Singh s/o Late Shri Mohan Lal, Senior Technician and dismissal orders dated 17.10.2008 of Shri Inder s/o Shri Agru Ram, Operator issued by the General Manager of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., after serving charge sheets and holding enquiry is legal and justified? If not what back wages, service benefits and relief Shri Baldev Singh s/o Late Shri Mohan Lal, Senior Technician and Shri Inder s/o Shri Agru Ram, Operator are entitled to?"

"Whether the strike of about 171 workmen *w.e.f.* 19.7.2009 to 18.8.2009 in the factory of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P. is legal and justified? If yes, to what wages and relief the workmen on strike for strike period are entitled to from the Management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P.? If not, then what legal service effects upon the workmen continuing on strike?"

2. Consequent upon the receiving of aforesaid reference, the Cosmo Karamchari Union (hereinafter referred as to petitioner union) has filed the claim petition averring therein that registered employees union having its registration no. 514, Shri Baldev Singh and Jiwan have been authorized to pursue the present matter before this court. It has further been averred that on 1-4-2009 the union has submitted a demand charter before the respondent management wherein two sets of demands were raised. First was to re-instate the President Shri Baldev Singh and worker Shri Inder Singh who's services were dismissed by the respondent management in an illegal manner *vide* dismissal orders dated 21-3-2009 and 5-11-2008 and the second demand in respect of increase in pay, allowance of workers and improvement in their service conditions. That Baldev Singh was initially appointed as Senior Technician on 2-4-2001 and he was getting monthly salary of Rs. 7301/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and never had been served with any show cause notice and that in the month of January, 2008 he was elected as President of the union and subsequently at many occasions he raised legal actions and proceedings before the competent authorities against the respondent management. As a result of which the management got annoyed with him and there by hatched conspiracy by terminating him from service in an illegal manner by serving a show cause notice on 12-1-2009 wherein it has been alleged that he had got published a false news in the news paper and that on 13-1-2009 another show cause notice was served upon Baldev Singh wherein it has been mentioned that he has submitted the false submission/declaration in his application form for employment. It is further stated that both the show cause notices were replied by Baldev Singh stating there in that the entire allegations have been imposed by the respondent just to harass and to victimize him and thereafter an enquiry was conducted against Baldev Singh by appointing an enquiry officer who conducted the enquiry proceedings contrary to the settled principles of natural justice and under the influence of the management and even the objection submitted in respect of the appointment of the enquiry officer *vide* letter dated 10-9-2009 had not been considered by the respondent management. It is stated that workmen Inder Singh was initially appointed as an operator in the month of August 2000 and granted with the monthly salary of Rs. 3886/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and that on 11-7-2008 a suspension order was served upon Inder Singh *vide* which the management had imposed false allegations that on 9th July, Inder Singh was roaming in Packing Department without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal which was replied on 15-7-2008 by Inder Singh and the enquiry proceedings held against him were contrary to the settled principles of natural justice and under the influence of the management of the respondent. It is further averred that due to his illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well to the management for reschedule/stopping of enquiry

proceedings but that request was turned down by overlooking the medical certificates submitted by Inder Singh. That due to his illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well as to management for reschedule/stopping of enquiry proceedings but that request was turned down without any justification and by mere saying that the doctor of ESI hospital has given the wrong certificate and thereby carried out the enquiry proceedings without associating Inder Singh. That in both the cases of Baldev Singh and Inder Singh the enquiry has been conducted in a biased manner against the set principles of natural justice and under the influence of management of respondent company. Hence, the dismissal order of both Baldev Singh and Inder Singh is illegal and arbitrary one and is liable to be quashed and set aside. That when the request of both the workers Baldev Singh and Inder Singh as well as of entire 171 workers did not fell on the deaf ears of the management, they left with no other alternative but to resort to strike *w.e.f.* 19-7-2009 to 18-8-2009 after serving the notice under section 22 of the Act. Since, the action of the respondent company in dismissing the services of Baldev Singh and Inder Singh are arbitrary, hence, strike of 171 workers cannot be termed as illegal. In respect of second demand, it is averred that the petitioner union had demanded that old grading system should be replaced by new grade system and every worker should be given with the increase of minimum wages of ₹ 3,000/- per month. That the petitioner union was compelled to raise the dispute *vide* demand notice dated 1-4-2009 challenging the dismissal order of Baldev Singh and Inder Singh *vis-à-vis* other issues and the conciliation meeting also got failed and ultimately the appropriate government referred the dispute to this Court. On the basis of these averments the petitioner prayed that the reference be answered in affirmative by issuing directions to the respondent company to reinstate the services of Baldev Singh and Inder Singh with retrospective effect alongwith all the consequential benefits including back-wages besides continuity of service and further to pay wages to 171 workmen for the period *w.e.f.* 19-7-2009 to 18-8-2009.

3. The respondent contested the petition by filing reply wherein preliminary objections have been taken that the reference is neither competent nor maintainable, that the demand notice dated 1.4.2009 raised by Baldev Singh is neither competent nor maintainable, that the reference deserves to be dismissed as the services of Baldev Singh and Inder Singh were dismissed after conducting proper enquiry. On merits, it has been averred that the resolution dated 12-7-2008 is totally false and fictitious and the claim petition has not been filed by authorized representative. That the demand notice could not have given by Baldev Singh as he was dismissed on 21-3-2009 and there was no employer and employee relationship. That the second set of demands in respect of increase of pay allowances, improvement of service conditions, giving of loans, attendance, award etc., are totally baseless, false and fictitious and the petitioner union is not entitled to any of the said benefits/demands raised. That a show cause notice-*cum*-chargesheet dated 12-1-2009 having been served on Baldev Singh in respect of the misconduct of insubordination, making false statements in the press, loss of confidence and suspending him with immediate effect are matter of record. That Baldev Singh participated in the enquiry and produced his witnesses, cross-examined the witnesses of respondent company and even submitted the written arguments and the enquiry officer conducted the enquiry in a just, proper and fair manner. That during the enquiry the misconduct leveled *vide* chargesheet dated 12-1-2009 and chargesheet dated 13-1-2009 stood duly proved. The service of Baldev Singh was dismissed after conducting a fair enquiry. That the work and conduct of Inder Singh was not satisfactory and the misconduct qua Inder Singh was major misconduct which was on the basis of incident which happened on 9-7-2008 in A shift when Inder Singh was roaming in packing department without permission and threatened Prakash Chand and Leela Kaushal. That the enquiry conducted against Inder Singh was as per the principles of natural justice and fair hearing and the procedure prescribed in the Standing Orders of the company. That the strike which was done was illegal, unjustified and bad in law as it was done during the conciliation proceedings which resulted in financial loss to the respondent company. That the demands so raised in the demand charter dated 1.4.2003 are totally wrong, baseless and devoid of merits. On the basis of these averments, the respondent prayed for the dismissal of the claim petition.

4. In rejoinder, the petitioner union controverted the assertions made in the reply and reaffirmed the averments of the claim petition.

5. On the pleadings of the parties, the following issues were framed by this Court on 27-10-2010 in both the references:—

1. Whether the demand notice dated 1.4.2009, raised by President/General Secretary, Cosmo Karamchari Sangh, Jabli, District Solan, H.P. before the management of respondent is legal, maintainable and justified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the workmen of the factory are justified as alleged? ...*OPP.*

3. Whether the services of S/ShriBaldev Singh s/o Late Shri Mohan Lal and Inder Singh s/o Shri Agru Ram, have been dismissed vide order dated 21-3-2009 and 17-10-2008 respectively without holding a fair and proper enquiry against the provisions of the natural justice as alleged? ...*OPP.*

4. If issue no.3 is proved in affirmative to what service benefits the aforesaid Baldev Singh & Inder Singh, are entitled to? ...*OPP.*

5. Whether the strike by about 171 workmen w.e.f. 19.7.2009 to 18.8.2009 in the factory of the respondent is legal and justified as alleged? …*OPP.*

6. If issue no.5 is proved in affirmative to what wages and relief, the workmen, on strike, are entitled to? …*OPP.*

7. Whether the claim of the petitioner union is neither competent nor maintainable as alleged? …*OPR.*

8. Relief.

6. *Vide* order dated 15-10-2012, the reference petition no. 98 of 2009 was consolidated with reference petition no. 87 of 2009 and it was further ordered that both the petitions shall be disposed of by a single award:—

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 Decided accordingly

Issue No. 2 Becomes redundant

Issue No. 3 Yes

Issue No. 4 Entitled to reinstatement with seniority and continuity but without back wages

Issue No. 5 Decided accordingly

Issue No. 6 Becomes redundant

Issue No.7 No.

Relief : Reference partly answered in favour of the petitioner union and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue no. 1 & 5 :

9. Being interlinked and correlated both these issues are taken up together for decision.

10. In support of these issues, the petitioner union examined PW-2 Shri Sat Parkash, who produced on record the settlement dated 19-5-2012 Ex. A *vide* which the terms of reference at serial no. 1 and 3 of reference no. 87 of 2009 and reference no. 90 of 2009 stood settled. He deposed that this settlement took place before the Labour Officer on 19-5-2012 as per section 12 (3) of the Act. He also tendered in evidence the union resolution Ex. B, letter dated 5-12-2012 Ex. C and letter dated 4-5-2012 Ex. D. He further deposed that as per the aforesaid settlement the workers are getting everything and now they have no dispute with respect to terms of reference at serial no. 1 & 3.

11. Therefore, in view of the aforesaid statement of PW-2, it has become clear that the terms of reference at serial no. 1 & 3 of both the references stand settled. Moreover, this Court had also passed an order regarding the settlement of terms of reference at serial no. 1 & 3 on 15-10-2012 which reads as under :

> "**At this stage a joint application under section 151 CPC was filed with the prayer to bring on record the settlement arrived at between the parties qua 1 and 3 of the reference. In the interest of justice, the request is allowed. Consequently, the settlement arrived at between the parties is brought on record and the relevant documents Ex. A to Ex. D are also brought on record. The final award in both the petitions shall be passed in view of the aforesaid settlement."**

Hence, in view of the settlement dated 19-5-2012 Ex. A, both these issues are decided accordingly.

Issues no. 2 & 6 :

12. In view of my findings on issues no. 1 and 5, these issues become redundant.

Issues no. 3 :

13. In support of this issue Shri Baldev Singh appeared into the witness box as PW-1 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he got news item published in "Daink Bhaskar" that the company was pressuring the employees to putting their resignation and go on leave and that the wages would be paid on 1-1-2009. He denied that the enquiry was conducted according to standing orders without bias and he was given opportunity of being heard.

14. Shri Inder Singh appeared into the witness box as PW-3 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that he replied to the charge sheet dated 11-7-2008 and thereafter an enquiry was conducted against him. He denied that certificate Ex. R-1 has been obtained falsely

from the IGMC hospital. He admitted that he received letters Ex. X-3 to Ex. X-5 from the management. He denied that after enquiry notice mark Z-1 and enquiry report Ex. X-6 was received by him. He admitted that he filed reply Ex. X-7 to second show cause notice. He further admitted that termination order Ex. X-7 was received by him through registered letter. He denied that the enquiry officer had conducted a fair enquiry against him in accordance with law.

15. Shri Jivan Singh appeared into the witness box as PW-4 and tendered in evidence his affidavit Ex. PW-4/1. In cross-examination, he denied that the action taken against Baldev Singh by the management was in accordance with rules and standing orders. He admitted that proper opportunity was granted to Baldev Singh to put forth his defence in the enquiry.

16. PW-5 Shri Kuldeep Singh also tendered in evidence his affidavit Ex. PW-5/1 wherein he reiterated almost all the averments as stated in the claim petition. In cross examination he denied that Baldev Singh had no authority to raise the demand notice dated 1-4-2009. He denied that when they resorted to strike on 19-7-2008, the conciliation proceedings were not pending. He admitted that the terms no. 1 & 3 of the reference have been settled. He further denied that Baldev Singh was afforded full opportunity to defend himself during enquiry. He denied that the services of Baldev Singh and Inder Singh have been terminated legally.

17. On the other hand, the respondent examined two RWs. Shri Ravi Luthra, Assistant Manager, HR with respondent company appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of GPA Ex. R-1, letter dated 19-2-2009 Ex. R-2, notice dated 2-1-2009 Ex. R-3, committee meeting dated 13-1-2009 Ex. R-4, termination letter Ex. R-5, letters dated 31-3-2009 and 10-6-2009 Ex. R-6 and Ex. R-7, letter dated 12-8-2009 Ex. R-8, enquiry proceedings dated 14-8-2009 Ex. R-9, letter dated 14-10-2008 Ex. R-10, letter dated 10-4-2008 Ex. R-11, two letters dated 23-9-2008 Ex. R-12, enquiry proceedings Ex. R-13 to Ex. R-16, letter issued by Arun Yadav Ex. R-17, show cause notice dated 11-10-2008 Ex. R-18, letter regarding enquiry report dated 8-10-2008 Ex. R-19, news item of paper cutting mark A-1, letter dated 3-2-2009 mark A-2, notice dated 12-1-2009 mark A-3, enquiry proceeding dated 11-8-2008 mark A-4, letter dated 12-8-2008 mark A-5 and proceedings of disciplinary committee mark A-6. In cross-examination, he admitted that Baldev Singh had submitted the demand charter in January 2008 before the management. He denied that show cause notice dated 12-01-2009 was issued to Baldev Singh as he refused to withdraw the demand charter. He further denied that false allegations were made against Baldev Singh. He admitted that during the enquiry proceedings against Baldev Singh he was representing the management. He admitted that the workers union had displayed on their own notice board whereby it was mentioned that one line of news item has been wrongly published by the reporter of the newspaper vide mark A-7. He denied that the enquiry against Inder Singh was initiated on wrong facts. He further denied that the enquiry conducted against Baldev Singh and Inder Singh was in violation of the principles of natural justice.

18. RW-2 Shri Laxmi Dutt Sharma also tendered in evidence his affidavit Ex. RW-2/A wherein it has been stated by him that he was appointed as an enquiry officer *vide* letter dated 16-7-2008 to conduct the domestic enquiry in respect of charges levied against Inder Singh and he intimated his appointment as an enquiry officer to Inder Singh and management and fixed the date of enquiry. He further stated that he conducted the enquiry as per the procedure prescribed under the certified standing orders of the respondent company. He also stated that he gave all the opportunities to Inder Singh to put forth his case. He also tendered in evidence letters dated 12-8-2008 mark X-1 and mark X-2, letter dated 14-8-2008 mark X-3, letter dated 14-8-2008 mark X-4, enquiry proceedings dated 14-8-2008 mark X-5, letter dated 4-9-2008 mark X-6, letter dated 3.9.2008, mark X-7, letter dated 20-9-2008 and registered AD receipt mark X-8, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23-9-2008 mark

X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. In cross-examination he denied that he had not explained the procedure to the chargesheeted worker at the time of commencement of the enquiry. He further denied that he had not conducted the enquiry in accordance with the principles of natural justice. He admitted that Inder Singh had submitted a protest letter during the enquiry. He further admitted that no letter was given to the defence assistance of Inder Singh regarding his non-appearance in the enquiry. He denied that enquiry proceedings were conducted as per the wishes of the management. He further denied that he had not given the enquiry report on the basis of the chargesheet.

19. I have closely scrutinized the entire evidence on record and from the closure scrutiny thereof it has become clear that Baldev Singh was initially appointed as senior technician on 2-4-2001 on a monthly salary of ₹ 7301/-. On 12-1-2009 a show cause notice-*cum*-chargesheet was served upon him with the allegations that he got published a false news in the news paper by giving information that the company is disbursing salary on 1-1-2009 and pressurizing the employees to give resignation or to go on compulsory holidays/vacations which news was contrary to the actual meeting and decision and due to this false news the company has suffered a huge monitory loss and this act of misconduct committed by Baldev Singh falls under Clause no. 22 (c), 27 (1), 34 of the Certified Standing Orders of the company. On 13-1-2009, another chargesheet was served upon Baldev Singh wherein it has been mentioned that Baldev Singh has submitted the false information/declaration in his application form for employment and the same is misconduct under Clause no. 27 (59) of the Certified Standing Orders of the company. That Baldev Singh had submitted reply to both the show cause notices and being unsatisfied with the reply filed by him, the respondent company initiated an enquiry against him by appointing an enquiry officer. That thereafter, Baldev Singh submitted objections qua holding of enquiry and then the management decided to conduct domestic enquiry afresh. Thereafter, fresh enquiry was conducted by the enquiry officer and Baldev Singh participated in the enquiry and during the enquiry the misconduct leveled *vide* show cause notice-*cum*-chargesheet dated 12-1-2009 and chargesheet dated 13-1-2009 against him stood duly proved and on the basis of enquiry report the service of Baldev Singh was dismissed on 21-3-2009.

20. The learned counsel for the petitioner next contended that the enquiry officer has not conducted the enquiry against Baldev Singh in a fair and proper manner and the principles of natural justice were also not followed during the enquiry proceedings. In **K. L. Tripathi** Vs. **State Bank of India and ors. AIR 1984 SC 273** while dealing with the concept of natural justice in the back-drop of departmental proceedings, it has been held as under :

> ''It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

In Maharashtra State Board of Secondary and Higher Secondary Education v. **K.S. Gandhi and Others (1991) 2 SCC 716**, the Hon'ble Apex Court laid down that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental

proceedings or domestic tribunal. The relevant para of the aforesaid judgment is reproduced as under:

> "37. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.……The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable.

The aforesaid decision was relied upon by the **Hon'ble Supreme Court in AIR 2005 S.C 570 titled as Cholan Roadways Ltd.** Vs. **G Thirugnanasambandam**, wherein it has been observed as under:

> "17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum."

> "18……."

"19. It is further trite that the standard of proof required in a domestic enquiry *vis-à-vis* a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative."

21. From the aforesaid decisions of the Hon'ble Supreme Court, it has become quite clear that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law and strict rules of Evidence Act do not apply to domestic enquiry. Now, in the light of the aforesaid decisions of the Hon'ble Supreme Court, it has to be seen in the present case as to whether there was any violation of principles of natural justice in the enquiry held against the petitioner Baldev Singh. While appearing into the witness box as PW-1, Baldev Singh in his affidavit dated 24-7-2011 deposed that the enquiry officer has acted in an illegal, discriminatory, unjust and capricious manner without appreciating the real facts and evidence on record so put forth by him. He also deposed that the enquiry officer had not given him adequate chance to submit the written arguments and *vide* letters dated 7-3-2009 and 10-3-2009, he requested the enquiry officer to give him 15 days time to submit the defence arguments but to the contrary the enquiry officer closed the enquiry on 12-3-2009 and submitted the enquiry report on 13-3-2009 before the management of the company. However, in cross-examination he admitted that he participated in the enquiry and the daily proceedings used to be got signed from him. He also admitted that two days time was given to him for filing written arguments. The onus was upon the petitioner to prove that the enquiry was not conducted in a fair and proper manner. It is a settled law that obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. In the present case, the petitioner has pleaded that the enquiry was not

conducted against him in a fair and proper manner. However, to substantiate these allegations, except for his bald statement, no other evidence has been led by him. PW-4 Jeewan Singh also admitted in cross-examination that proper opportunity was given to Baldev Singh to put forth his defence. The perusal of the enquiry proceedings reveals that the petitioner had participated in the enquiry proceedings, produced his witnesses and also cross-examined the witnesses of respondent and he even submitted his written arguments. I have gone through the enquiry proceedings as well as enquiry report and in the absence of any cogent evidence adduced by the petitioner, it cannot be said that the enquiry against Baldev Singh was not conducted in a fair and proper manner and there had been any violation of principles of natural justice as contended by the learned counsel for the petitioner.

22. From the perusal of the record it has become clear that the petitioner Inder Singh was initially appointed as an operator in the month of August 2000 with the monthly salary of ₹ 3886/- and on 11-7-2008 a suspension order was served upon him vide which the management had imposed allegations against him that on 9th July in "A" shift he was roaming in packing department without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal and thereby committed a major misconduct under clause no. 27, 25, 51 of the Certified Standing Orders of the company. That in pursuance to the suspension order Inder Singh submitted his detailed reply and since his reply was not found satisfactory the respondent took a decision to hold a domestic enquiry against him and thereafter an enquiry officer was appointed. Initially Inder Singh participated in the enquiry alongwith his representative Shri Jeewan Singh but after 15-9-2008, he did not participate in the enquiry and was proceeded against *ex-parte* and on 7-10-2008, the enquiry proceedings were carried out by the enquiry officer without associating Inder Singh and then the enquiry report was submitted by the enquiry officer and on the basis of the enquiry report, the services of Inder Singh were dismissed. The learned counsel for the petitioner contended that due to illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well as to the management for reschedule/stopping of enquiry proceedings but that request was turned down and the medical certificates submitted by Inder Singh were overlooked by the enquiry officer and he carried the enquiry proceedings without associating Inder Singh in the enquiry as such the enquiry conducted against Inder Singh is illegal and arbitrary. Therefore, it was for the petitioner to prove by leading cogent and satisfactory evidence on record that due to illness he could not participate in the enquiry proceedings and he was wrongly proceeded against *ex-parte.* However, except for the bald statement of Inder Singh no other satisfactory evidence has been led by him to prove that he could not participate in the enquiry due to his illness. He has failed to prove on record the medical certificates submitted by him before the enquiry officer. No Doctor was examined by him before this Court to prove that he was ill during the relevant period. On the other hand the enquiry officer categorically deposed in his affidavit Ex. RW-2/A that he wrote a letter dated 4-10-2008 to Inder Singh fixing the next date of hearing on 7-10-2008 and he also wrote to Inder Singh that on 22-10-2008 at 8.00 PM, Inder Singh was seen on bike at the gate of Cosmo Ferrites alongwith other workers and he was faking illness. He also deposed that the Doctor of ESI hospital submitted that Inder Singh had not come back for further examination and the treatment and advice till date is sufficient to make him fit to resume his duties. He also deposed that medical prescription slip dated 4.10.2008 was never submitted to him during enquiry. He further deposed that Inder Singh was granted sufficient opportunity to defend himself in the enquiry but he failed to participate in the same. The petitioner Inder Singh admitted in cross-examination that after 15-9-2008 he failed to appear in the enquiry and the enquiry was adjourned for three times keeping in view his illness. He also admitted in cross examination that he had received the letters Ex. X-3 to Ex. X-5. Therefore, from the perusal of entire evidence on record, it has become clear that the petitioner Inder Singh was well aware about the enquiry proceedings but he failed to appear in the enquiry inspite of the intimation to him by the enquiry officer. Now, the question which arises for consideration before this Court is as to whether the petitioner can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon'ble Supreme Court in a catena of judgments

held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In **AIR 2008 SC (Supl.) 1542, Board of Directors H.P.T.C** Vs. **K.C Rahi**, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is stopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under :

> "……..The Tribunal also held that from the representation dated 09-08-1993 and 19-10-1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance of the principle of natural justice……".

Furthermore, **in (2008)-4 SCC 42, Pepsu Road Transport Corporation Vs. Rawel Singh**, it has been held as under :

> "15……. We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.
>
> 16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside".

Similarly, in **(1997) 10 S.C.C 386, Ranjan Kumar Mitra** Vs. **Andrew Yule & Co. Ltd., and others** it has been observed as under :

> "1. In view of the fact that the appellant's services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by him in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition."

23. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioner is estopped from raising the plea of non-compliance of principles of natural justice as he had failed to participate in the enquiry despite being aware about the enquiry proceedings. RW-2, the enquiry officer further deposed that he submitted the enquiry report to the respondent company wherein the misconduct stood duly proved against Inder Singh in the enquiry. He also tendered in evidence the enquiry proceedings dated 14-8-2008 mark X-5, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23-9-2008 mark X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. I have gone through the enquiry proceedings as well the enquiry report Ex. X-6 and in view of the entire evidence on record and also in view of the facts and circumstances of the present case, it cannot be

said that the enquiry against Inder Singh was not conducted in a fair and proper manner and there has been violation of principles of natural justice as contended by the learned counsel for the petitioner.

24. The learned counsel for the petitioner next contended that the punishment of dismissal of service of both the petitioners is disproportionate to the gravity of misconduct. The charges leveled against both the petitioners *i.e.* Baldev Singh and Inder Singh stood duly proved and their services had been dispensed with *w.e.f.* 21-3-2009 and 17-10-2008 respectively. In the opinion of this Court the dismissal of both the petitioners on the allegations leveled in the chargesheets is excessively high and disproportionate to the acts of misconducts committed by them. The charges leveled against the petitioners cannot be regarded as a grave misconduct. Now, the next question which arises for consideration before this Court is as to whether this Court can interfere in the quantum of punishment imposed by the respondent. I**n (2005) 3 S. C. 134, Mahindra and Mahindra Ltd.** Vs. **N.B Narawade,** it has been held by the Hon'ble Supreme Court that after introduction of section 11-A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/ Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under :

> "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment." (*emphasis supplied*).

25. In the present case it is matter of record that the past record of both the petitioners is clean and no other misconduct has been pointed out against them. Admittedly, petitioner Baldev Singh had been engaged as senior technician and petitioner Inder Singh had been engaged as an operator. Both of them were not engaged in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Hence, in view of the entire evidence led by the parties and also in view of the facts and circumstances of the present case, this Court is of the opinion that the quantum of punishment imposed upon both the petitioners was too harsh and wholly disproportionate to their act of misconduct. Therefore, looking to the charges levelled against both the petitioners and keeping in view their past service record, the punishment of dismissal of the services of petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh *w.e.f.* 17-10-2008 is hereby set aside and quashed. Accordingly, issue no.1 is decided in favour of the petitioners and against the respondent.

Issue no. 4 :

26. Since, I have held under issue no.3 above that the action of the respondent to terminate the services of the petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh *w.e.f.* 17-10-2008 is illegal and unjustified, hence, both the petitioners are held entitled to reinstatement in service with seniority and continuity.

27. Now, the question which arises for consideration, before this Court is as to whether the petitioner Baldev Singh and Inder Singh are entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

28. Moreover, both the petitioners Baldev Singh and Inder Singh were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of their services. The initial burden is on the workman/employee to show that they were not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C Sharma** that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

29. In the present case, both the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination/ disengagement. Even, both the petitioners in their deposition before the Court have failed to state that they were not gainfully employed after the termination of their services. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioners Baldev Singh and Inder Singh are not entitled to any back-wages. Hence, this issue is decided accordingly.

Issue No.7:

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner union has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues no.1 to 7, the claim of the petitioner union succeeds and is hereby partly allowed and the petitioners Baldev Singh and Inder Singh are ordered to be reinstated in service forthwith with seniority and continuity. However the petitioners Baldev Singh and Inder Singh are not entitled to back wages and as such the reference is partly answered in favour of the petitioner union and against the respondent. It is also ordered that the original award be placed on record in reference no. 87 of 2009 and authenticated copy of the same be placed in reference no. 98 of 2009. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

1. Ref. No. 87 of 2009
Instituted on 10-11-2009
Decided on 30-12-2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP ...*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP. ...*Respondent.*

2. Ref. No. 98 of 2009
Instituted on 18-11-2009
Decided on 30-12-2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP. ...*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP. …Respondent.

References under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vishal Panwar, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

This award shall dispose of the above mentioned consolidated claim petitions filed by the petitioner union arising out of reference no. 87 of 2009 and 98 of 2009, received from the appropriate government, the terms of which are similar and reads as under :

"Whether the Demand Notice dated 1-4-2009 (Copy enclosed) raised by the President/General Secretary, Cosmo Karamchari Sangh (Reg.No.-514), Jabli, District Solan, H.P., before the management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., is maintainable, legal and justified? If yes, to what benefits the workmen of the factory are entitled to?"

"Whether the dismissal order dated 21-3-2009 of Shri Baldev Singh S/o Late Shri Mohan Lal, Senior Technician and dismissal orders dated 17-10-2008 of Shri Inder s/o

Shri Agru Ram, Operator issued by the General Manager of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., after serving charge sheets and holding enquiry is legal and justified? If not what back wages, service benefits and relief Shri Baldev Singh s/o Late Shri Mohan Lal, Senior Technician and Shri Inder s/o Shri Agru Ram, Operator are entitled to?"

"Whether the strike of about 171 workmen *w.e.f.* 19-7-2009 to 18-8-2009 in the factory of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P. is legal and justified? If yes, to what wages and relief the workmen on strike for strike period are entitled to from the Management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P.? If not, then what legal service effects upon the workmen continuing on strike?"

2. Consequent upon the receiving of aforesaid reference, the Cosmo Karamchari Union (hereinafter referred as to petitioner union) has filed the claim petition averring therein that registered employees union having its registration no. 514, Shri Baldev Singh and Jiwan have been authorized to pursue the present matter before this court. It has further been averred that on 1-4-2009 the union has submitted a demand charter before the respondent management wherein two sets of demands were raised. First was to re-instate the President Shri Baldev Singh and worker Shri Inder Singh who's services were dismissed by the respondent management in an illegal manner *vide* dismissal orders dated 21-3-2009 and 5-11-2008 and the second demand in respect of increase in pay, allowance of workers and improvement in their service conditions. That Baldev Singh was initially appointed as Senior Technician on 2-4-2001 and he was getting monthly salary of Rs. 7301/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and never had been served with any show cause notice and that in the month of January 2008 he was elected as President of the union and subsequently at many occasions he raised legal actions and proceedings before the competent authorities against the respondent management. As a result of which the management got annoyed with him and there by hatched conspiracy by terminating him from service in an illegal manner by serving a show cause notice on 12-1-2009 wherein it has been alleged that he had got published a false news in the news paper and that on 13-1-2009 another show cause notice was served upon Baldev Singh wherein it has been mentioned that he has submitted the false submission/declaration in his application form for employment. It is further stated that both the show cause notices were replied by Baldev Singh stating there in that the entire allegations have been imposed by the respondent just to harass and to victimize him and thereafter an enquiry was conducted against Baldev Singh by appointing an enquiry officer who conducted the enquiry proceedings contrary to the settled principles of natural justice and under the influence of the management and even the objection submitted in respect of the appointment enquiry officer *vide* letter dated 10-9-2009 had not been considered by the respondent management. It is stated that workmen Inder Singh was initially appointed as an operator in the month of August, 2000 and granted with the monthly salary of Rs. 3886/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and that on 11-7-2008 a suspension order was served upon Inder Singh *vide* which the management had imposed false allegations that on 9th July, Inder Singh was roaming in Packing Department without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal which was replied on 15-7-2008 by Inder Singh and the enquiry proceedings held against him were contrary to the settled principles of natural justice and under the influence of the management of the respondent. It is further averred that due to his illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well to the management for reschedule/stopping of enquiry proceedings but that request was turned down by overlooking the medical certificates submitted by Inder Singh. That due to his illness, Inder Singh had written letters on 18.9.2008, 30.9.2008 and 8.10.2008 to the enquiry officer as well as to management for reschedule/stopping of enquiry proceedings but that request was turned down without any justification and by mere saying that the doctor of ESI hospital has given the wrong certificate and thereby carried out the enquiry proceedings without

associating Inder Singh. That in both the cases of Baldev Singh and Inder Singh the enquiry has been conducted in a biased manner against the set principles of natural justice and under the influence of management of respondent company. Hence, the dismissal order of both Baldev Singh and Inder Singh is illegal and arbitrary one and is liable to be quashed and set aside. That when the request of both the workers Baldev Singh and Inder Singh as well as of entire 171 workers did not fell on the deaf ears of the management, they left with no other alternative but to resort to strike w.e.f. 19-7-2009 to 18-8-2009 after serving the notice under section 22 of the Act. Since, the action of the respondent company in dismissing the services of Baldev Singh and Inder Singh are arbitrary, hence, strike of 171 workers cannot be termed as illegal. In respect of second demand, it is averred that the petitioner union had demanded that old grading system should be replaced by new grade system and every worker should be given with the increase of minimum wages of ₹ 3,000/- per month. That the petitioner union was compelled to raise the dispute vide demand notice dated 1-4-2009 challenging the dismissal order of Baldev Singh and Inder Singh *vis-à-vis* other issues and the conciliation meeting also got failed and ultimately the appropriate government referred the dispute to this Court. On the basis of these averments the petitioner prayed that the reference be answered in affirmative by issuing directions to the respondent company to reinstate the services of Baldev Singh and Inder Singh with retrospective effect alongwith all the consequential benefits including back-wages besides continuity of service and further to pay wages to 171 workmen for the period *w.e.f.* 19-7-2009 to 18-8-2009.

3. The respondent contested the petition by filing reply wherein preliminary objections have been taken that the reference is neither competent nor maintainable, that the demand notice dated 1.4.2009 raised by Baldev Singh is neither competent nor maintainable, that the reference deserves to be dismissed as the services of Baldev Singh and Inder Singh were dismissed after conducting proper enquiry. On merits, it has been averred that the resolution dated 12-7-2008 is totally false and fictitious and the claim petition has not been filed by authorized representative. That the demand notice could not have given by Baldev Singh as he was dismissed on 21-3-2009 and there was no employer and employee relationship. That the second set of demands in respect of increase of pay allowances, improvement of service conditions, giving of loans, attendance, award etc., are totally baseless, false and fictitious and the petitioner union is not entitled to any of the said benefits/demands raised. That a show cause notice-*cum*-chargesheet dated 12-1-2009 having been served on Baldev Singh in respect of the misconduct of insubordination, making false statements in the press, loss of confidence and suspending him with immediate effect are matter of record. That Baldev Singh participated in the enquiry and produced his witnesses, cross-examined the witnesses of respondent company and even submitted the written arguments and the enquiry officer conducted the enquiry in a just, proper and fair manner. That during the enquiry the misconduct leveled *vide* chargesheet dated 12-1-2009 and chargesheet dated 13-1-2009 stood duly proved. The service of Baldev Singh was dismissed after conducting a fair enquiry. That the work and conduct of Inder Singh was not satisfactory and the misconduct qua Inder Singh was major misconduct which was on the basis of incident which happened on 9-7-2008 in A shift when Inder Singh was roaming in packing department without permission and threatened Prakash Chand and Leela Kaushal. That the enquiry conducted against Inder Singh was as per the principles of natural justice and fair hearing and the procedure prescribed in the Standing Orders of the company. That the strike which was done was illegal, unjustified and bad in law as it was done during the conciliation proceedings which resulted in financial loss to the respondent company. That the demands so raised in the demand charter dated 1.4.2003 are totally wrong, baseless and devoid of merits. On the basis of these averments, the respondent prayed for the dismissal of the claim petition.

4. In rejoinder, the petitioner union controverted the assertions made in the reply and reaffirmed the averments of the claim petition.

5. On the pleadings of the parties, the following issues were framed by this Court on 27-10-2010 in both the references :—

(1) Whether the demand notice dated 1.4.2009, raised by President/General Secretary, Cosmo Karamchari Sangh, Jabli, District Solan, H.P. before the management of respondent is legal, maintainable and justified as alleged? …*OPP.*

(2) If issue no.1 is proved in affirmative, to what service benefits the workmen of the factory are justified as alleged? …*OPP.*

(3) Whether the services of S/Shri Baldev Singh s/o Late Shri Mohan Lal and Inder Singh s/o ShriAgru Ram, have been dismissed *vide* order dated 21-3-2009 and 17-10-2008 respectively without holding a fair and proper enquiry against the provisions of the natural justice as alleged? …*OPP.*

(4) If issue no. 3 is proved in affirmative to what service benefits the aforesaid Baldev Singh & Inder Singh, are entitled to? …*OPP.*

(5) Whether the strike by about 171 workmen *w.e.f.* 19.7.2009 to 18.8.2009 in the factory of the respondent is legal and justified as alleged? …*OPP.*

(6) If issue no. 5 is proved in affirmative to what wages and relief, the workmen, on strike, are entitled to? …*OPP.*

(7) Whether the claim of the petitioner union is neither competent nor maintainable as alleged? …*OPR.*

(8) Relief.

6. *Vide* order dated 15-10-2012, the reference petition no. 98 of 2009 was consolidated with reference petition no. 87 of 2009 and it was further ordered that both the petitions shall be disposed of by a single award.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Decided accordingly

Issue no. 2 Becomes redundant

Issue no. 3 Yes

Issue no. 4 Entitled to reinstatement with seniority and continuity but without back wages

Issue no. 5 Decided accordingly

Issue no. 6 Becomes redundant

Issue no. 7 No

Relief : Reference partly answered in favour of the petitioner union and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue no. 1 & 5:

9. Being interlinked and correlated both these issues are taken up together for decision.

10. In support of these issues, the petitioner union examined PW-2 Shri Sat Parkash, who produced on record the settlement dated 19-5-2012 Ex. A *vide* which the terms of reference at serial no. 1 and 3 of reference no. 87 of 2009 and reference no. 90 of 2009 stood settled. He deposed that this settlement took place before the Labour Officer on 19.5.2012 as per section 12 (3) of the Act. He also tendered in evidence the union resolution Ex. B, letter dated 5.12.2012 Ex. C and letter dated 4.5.2012 Ex. D. He further deposed that as per the aforesaid settlement the workers are getting everything and now they have no dispute with respect to terms of reference at serial no. 1 & 3.

11. Therefore, in view of the aforesaid statement of PW-2, it has become clear that the terms of reference at serial no. 1 & 3 of both the references stand settled. Moreover, this Court had also passed an order regarding the settlement of terms of reference at serial no. 1 & 3 on 15.10.2012 which reads as under :

> "**At this stage a joint application under section 151 CPC was filed with the prayer to bring on record the settlement arrived at between the parties qua 1 and 3 of the reference. In the interest of justice, the request is allowed. Consequently, the settlement arrived at between the parties is brought on record and the relevant documents Ex. A to Ex. D are also brought on record. The final award in both the petitions shall be passed in view of the aforesaid settlement."**

Hence, in view of the settlement dated 19.5.2012 Ex. A, both these issues are decided accordingly.

Issues no. 2 & 6 :

12. In view of my findings on issues no. 1 and 5, these issues become redundant.

Issues no. 3 :

13. In support of this issue Shri Baldev Singh appeared into the witness box as PW-1 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he got news item published in "Dainik Bhaskar" that the company was pressuring the employees to putting their resignation and go on leave and that the wages would be paid on 1-1-2009. He denied that the enquiry was conducted according to standing orders without bias and he was given opportunity of being heard.

14. Shri Inder Singh appeared into the witness box as PW-3 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that he replied to the chargesheet dated 11-7-2008 and thereafter an enquiry was conducted against him. He denied that certificate Ex. R-1 has been obtained falsely from the IGMC hospital. He admitted that he received letters Ex. X-3 to Ex. X-5 from the management. He denied that after enquiry notice mark Z-1 and enquiry report Ex. X-6 was received by him. He admitted that he filed reply Ex. X-7 to second show cause notice. He further admitted that termination order Ex. X-7 was received by him through registered letter. He denied that the enquiry officer had conducted a fair enquiry against him in accordance with law.

15. Shri Jivan Singh appeared into the witness box as PW-4 and tendered in evidence his affidavit Ex. PW-4/1. In cross-examination, he denied that the action taken against Baldev Singh by the management was in accordance with rules and standing orders. He admitted that proper opportunity was granted to Baldev Singh to put forth his defence in the enquiry.

16. PW-5 Shri Kuldeep Singh also tendered in evidence his affidavit Ex. PW- 5/1 wherein he reiterated almost all the averments as stated in the claim petition. In crossexamination he denied that Baldev Singh had no authority to raise the demand notice dated 1-4-2009. He denied that when they resorted to strike on 19-7-2008, the conciliation proceedings were not pending. He admitted that the terms no. 1 & 3 of the reference have been settled. He further denied that Baldev Singh was afforded full opportunity to defend himself during enquiry. He denied that the services of Baldev Singh and Inder Singh have been terminated legally.

17. On the other hand, the respondent examined two RWs. Shri Ravi Luthra, Assistant Manager, HR with respondent company appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of GPA Ex. R-1, letter dated 19-2-2009 Ex. R-2, notice dated 2-1-2009 Ex. R-3, committee meeting dated 13-1-2009 Ex. R-4, termination letter Ex. R-5, letters dated 31.3.2009 and 10.6.2009 Ex. R-6 and Ex. R-7, letter dated 12-8-2009 Ex. R-8, enquiry proceedings dated 14-8-2009 Ex. R-9, letter dated 14-10-2008 Ex. R-10, letter dated 10-4-2008 Ex. R-11, two letters dated 23-9-2008 Ex. R-12, enquiry proceedings Ex. R-13 to Ex. R-16, letter issued by Arun Yadav Ex. R-17, show cause notice dated 11-10-2008 Ex. R-18, letter regarding enquiry report dated 8-10-2008 Ex. R-19, news item of paper cutting mark A-1, letter dated 3-2-2009 mark A-2, notice dated 12-1-2009 mark A-3, enquiry proceeding dated 11-8-2008 mark A-4, letter dated 12-8-2008 mark A-5 and proceedings of disciplinary committee mark A-6. In cross-examination, he admitted that Baldev Singh had submitted the demand charter in January 2008 before the management. He denied that show cause notice dated 12-01-2009 was issued to Baldev Singh as he refused to withdraw the demand charter. He further denied that false allegations were made against Baldev Singh. He admitted that during the enquiry proceedings against Baldev Singh he was representing the management. He admitted that the workers union had displayed on their own notice board whereby it was mentioned that one line of news item has been wrongly published by the reporter of the newspaper *vide* mark A-7. He denied that the enquiry against Inder Singh was initiated on wrong facts. He further denied that the enquiry conducted against Baldev Singh and Inder Singh was in violation of the principles of natural justice.

18. RW-2 Shri Laxmi Dutt Sharma also tendered in evidence his affidavit Ex. RW-2/A wherein it has been stated by him that he was appointed as an enquiry officer *vide* letter dated 16-7-2008 to conduct the domestic enquiry in respect of charges levied against Inder Singh and he intimated his appointment as an enquiry officer to Inder Singh and management and fixed the date of enquiry. He further stated that he conducted the enquiry as per the procedure prescribed under the certified standing orders of the respondent company. He also stated that he gave all the opportunities to Inder Singh to put forth his case. He also tendered in evidence letters dated 12-8-2008 mark X-1 and mark X-2, letter dated 14-8-2008 mark X-3, letter dated 14.8.2008 mark X-4, enquiry proceedings dated 14-8-2008 mark X-5, letter dated 4.9.2008 mark X-6, letter dated 3.9.2008, mark X-7, letter dated 20-9-2008 and registered AD receipt mark X-8, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23-9-2008 mark X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. In cross-examination he denied that he had not explained the procedure to the chargesheeted worker at the time of commencement of the enquiry. He further denied that he had not conducted the enquiry in accordance with the principles of natural justice. He admitted that Inder Singh had submitted a protest letter during the enquiry. He further admitted that no letter was given to the defence assistance of Inder Singh regarding his non-appearance in

the enquiry. He denied that enquiry proceedings were conducted as per the wishes of the management. He further denied that he had not given the enquiry report on the basis of the chargesheet.

19. I have closely scrutinized the entire evidence on record and from the closure scrutiny thereof it has become clear that Baldev Singh was initially appointed as senior technician on 2-4-2001 on a monthly salary of ₹ 7301/-. On 12-1-2009 a show cause notice-*cum*-chargesheet was served upon him with the allegations that he got published a false news in the news paper by giving information that the company is disbursing salary on 1-1-2009 and pressurizing the employees to give resignation or to go on compulsory holidays/vacations which news was contrary to the actual meeting and decision and due to this false news the company has suffered a huge monitory loss and this act of misconduct committed by Baldev Singh falls under Clause no. 22 (c), 27 (1), 34 of the Certified Standing Orders of the company. On 13-1-2009, another chargesheet was served upon Baldev Singh wherein it has been mentioned that Baldev Singh has submitted the false information/declaration in his application form for employment and the same is misconduct under Clause no. 27 (59) of the Certified Standing Orders of the company. That Baldev Singh had submitted reply to both the show cause notices and being unsatisfied with the reply filed by him, the respondent company initiated an enquiry against him by appointing an enquiry officer. That thereafter, Baldev Singh submitted objections qua holding of enquiry and then the management decided to conduct domestic enquiry afresh. Thereafter, fresh enquiry was conducted by the enquiry officer and Baldev Singh participated in the enquiry and during the enquiry the misconduct leveled *vide* show cause notice-*cum*-chargesheet dated 12-1-2009 and chargesheet dated 13-1-2009 against him stood duly proved and on the basis of enquiry report the service of Baldev Singh was dismissed on 21-3-2009.

20. The learned counsel for the petitioner next contended that the enquiry officer has not conducted the enquiry against Baldev Singh in a fair and proper manner and the principles of natural justice were also not followed during the enquiry proceedings. In **K.L Tripathi** Vs. **State Bank of India and ors. AIR 1984 SC 273** while dealing with the concept of natural justice in the back-drop of departmental proceedings, it has been held as under :

> "It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

In Maharashtra State Board of Secondary and Higher Secondary Education v. **K.S. Gandhi and Others (1991) 2 SCC 716**, the Hon'ble Apex Court laid down that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. The relevant para of the aforesaid judgment is reproduced as under:

> "37. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the

Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.……The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable.

The aforesaid decision was relied upon by the **Hon'ble Supreme Court in AIR 2005 S.C 570 titled as Cholan Roadways Ltd.** Vs. **G Thirugnanasambandam**, wherein it has been observed as under:

"17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum."

"18……."

"19. It is further trite that the standard of proof required in a domestic enquiry *vis-à-vis* a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative."

21. From the aforesaid decisions of the Hon'ble Supreme Court, it has become quite clear that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law and strict rules of Evidence Act do not apply to domestic enquiry. Now, in the light of the aforesaid decisions of the Hon'ble Supreme Court, it has to be seen in the present case as to whether there was any violation of principles of natural justice in the enquiry held against the petitioner Baldev Singh. While appearing into the witness box as PW-1, Baldev Singh in his affidavit dated 24-7-2011 deposed that the enquiry officer has acted in an illegal, discriminatory, unjust and capricious manner without appreciating the real facts and evidence on record so put forth by him. He also deposed that the enquiry officer had not given him adequate chance to submit the written arguments and *vide* letters dated 7-3-2009 and 10-3-2009, he requested the enquiry officer to give him 15 days time to submit the defence arguments but to the contrary the enquiry officer closed the enquiry on 12-3-2009 and submitted the enquiry report on 13-3-2009 before the management of the company. However, in cross-examination he admitted that he participated in the enquiry and the daily proceedings used to be got signed from him. He also admitted that two days time was given to him for filing written arguments. The onus was upon the petitioner to prove that the enquiry was not conducted in a fair and proper manner. It is a settled law that obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. In the present case, the petitioner has pleaded that the enquiry was not conducted against him in a fair and proper manner. However, to substantiate these allegations, except for his bald statement, no other evidence has been led by him. PW-4 Jeewan Singh also admitted in cross-examination that proper opportunity was given to Baldev Singh to put forth his defence. The perusal of the enquiry proceedings reveals that the petitioner had participated in the enquiry proceedings, produced his witnesses and also cross-examined the witnesses of respondent and he even submitted his written arguments. I have gone through the enquiry proceedings as well

as enquiry report and in the absence of any cogent evidence adduced by the petitioner, it cannot be said that the enquiry against Baldev Singh was not conducted in a fair and proper manner and there had been any violation of principles of natural justice as contended by the learned counsel for the petitioner.

22. From the perusal of the record it has become clear that the petitioner Inder Singh was initially appointed as an operator in the month of August 2000 with the monthly salary of ₹ 3886/- and on 11-7-2008 a suspension order was served upon him *vide* which the management had imposed allegations against him that on 9th July in "A" shift he was roaming in packing department without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal and thereby committed a major misconduct under clause no. 27, 25, 51 of the Certified Standing Orders of the company. That in pursuance to the suspension order Inder Singh submitted his detailed reply and since his reply was not found satisfactory the respondent took a decision to hold a domestic enquiry against him and thereafter an enquiry officer was appointed. Initially Inder Singh participated in the enquiry alongwith his representative Shri Jeewan Singh but after 15-9-2008, he did not participate in the enquiry and was proceeded against *ex-parte* and on 7-10-2008, the enquiry proceedings were carried out by the enquiry officer without associating Inder Singh and then the enquiry report was submitted by the enquiry officer and on the basis of the enquiry report, the services of Inder Singh were dismissed. The learned counsel for the petitioner contended that due to illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well as to the management for reschedule/stopping of enquiry proceedings but that request was turned down and the medical certificates submitted by Inder Singh were overlooked by the enquiry officer and he carried the enquiry proceedings without associating Inder Singh in the enquiry as such the enquiry conducted against Inder Singh is illegal and arbitrary. Therefore, it was for the petitioner to prove by leading cogent and satisfactory evidence on record that due to illness he could not participate in the enquiry proceedings and he was wrongly proceeded against *ex-parte.* However, except for the bald statement of Inder Singh no other satisfactory evidence has been led by him to prove that he could not participate in the enquiry due to his illness. He has failed to prove on record the medical certificates submitted by him before the enquiry officer. No Doctor was examined by him before this Court to prove that he was ill during the relevant period. On the other hand the enquiry officer categorically deposed in his affidavit Ex. RW-2/A that he wrote a letter dated 4-10-2008 to Inder Singh fixing the next date of hearing on 7-10-2008 and he also wrote to Inder Singh that on 22-10-2008 at 8.00 PM, Inder Singh was seen on bike at the gate of Cosmo Ferrites alongwith other workers and he was faking illness. He also deposed that the Doctor of ESI hospital submitted that Inder Singh had not come back for further examination and the treatment and advice till date is sufficient to make him fit to resume his duties. He also deposed that medical prescription slip dated 4-10-2008 was never submitted to him during enquiry. He further deposed that Inder Singh was granted sufficient opportunity to defend himself in the enquiry but he failed to participate in the same. The petitioner Inder Singh admitted in cross-examination that after 15-9-2008 he failed to appear in the enquiry and the enquiry was adjourned for three times keeping in view his illness. He also admitted in crossexamination that he had received the letters Ex. X-3 to Ex. X-5. Therefore, from the perusal of entire evidence on record, it has become clear that the petitioner Inder Singh was well aware about the enquiry proceedings but he failed to appear in the enquiry inspite of the intimation to him by the enquiry officer. Now, the question which arises for consideration before this Court is as to whether the petitioner can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon'ble Supreme Court in a catena of judgments held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In **AIR 2008 SC (Supl.) 1542, Board of Directors H.P.T.C** Vs. **K.C Rahi**, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is stopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under :

"……..The Tribunal also held that from the representation dated 09-08-1993 and 19-10-1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance of the principle of natural justice……".

Furthermore, **in (2008)-4 SCC 42, Pepsu Road Transport Corporation** Vs. **Rawel Singh**, it has been held as under :

"15……. We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside".

Similarly, in **(1997) 10 S.C.C 386, Ranjan Kumar Mitra** Vs. **Andrew Yule & Co. Ltd., and others** it has been observed as under:

"1. In view of the fact that the appellant"s services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by him in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition."

23. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioner is estopped from raising the plea of non-compliance of principles of natural justice as he had failed to participate in the enquiry despite being aware about the enquiry proceedings. RW-2, the enquiry officer further deposed that he submitted the enquiry report to the respondent company wherein the misconduct stood duly proved against Inder Singh in the enquiry. He also tendered in evidence the enquiry proceedings dated 14-8-2008 mark X-5, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23.9.2008 mark X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. I have gone through the enquiry proceedings as well the enquiry report Ex. X-6 and in view of the entire evidence on record and also in view of the facts and circumstances of the present case, it cannot be said that the enquiry against Inder Singh was not conducted in a fair and proper manner and there has been violation of principles of natural justice as contended by the learned counsel for the petitioner.

24. The learned counsel for the petitioner next contended that the punishment of dismissal of service of both the petitioners is disproportionate to the gravity of misconduct. The charges

leveled against both the petitioners *i.e.* Baldev Singh and Inder Singh stood duly proved and their services had been dispensed with w.*e.f.* 21-3-2009 and 17-10-2008 respectively. In the opinion of this Court the dismissal of both the petitioners on the allegations leveled in the chargesheets is excessively high and disproportionate to the acts of misconducts committed by them. The charges leveled against the petitioners cannot be regarded as a grave misconduct. Now, the next question which arises for consideration before this Court is as to whether this Court can interfere in the quantum of punishment imposed by the respondent. In **(2005) 3 S.C.C 134, Mahindra and Mahindra Ltd.** Vs. **N.B Narawade,** it has been held by the Hon'ble Supreme Court that after introduction of section 11 –A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under :

> "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment." (emphasis supplied).

25. In the present case it is matter of record that the past record of both the petitioners is clean and no other misconduct has been pointed out against them. Admittedly, petitioner Baldev Singh had been engaged as senior technician and petitioner Inder Singh had been engaged as an operator. Both of them were not engaged in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Hence, in view of the entire evidence led by the parties and also in view of the facts and circumstances of the present case, this Court is of the opinion that the quantum of punishment imposed upon both the petitioners was too harsh and wholly disproportionate to their act of misconduct. Therefore, looking to the charges leveled against both the petitioners and keeping in view their past service record, the punishment of dismissal of the services of petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh w.e.f. 17-10-2008 is hereby set aside and quashed. Accordingly, issue no.1 is decided in favour of the petitioners and against the respondent.

Issue no. 4 :

26. Since, I have held under issue no.3 above that the action of the respondent to terminate the services of the petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh *w.e.f.* 17-10-2008 is illegal and unjustified, hence, both the petitioners are held entitled to reinstatement in service with seniority and continuity.

27. Now, the question which arises for consideration, before this Court is as to whether the petitioner Baldev Singh and Inder Singh are entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon"ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him.

However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

28. Moreover, both the petitioners Baldev Singh and Inder Singh were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of their services. The initial burden is on the workman/employee to show that they were not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C Sharma** that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

29. In the present case, both the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination/ disengagement. Even, both the petitioners in their deposition before the Court have failed to state that they were not gainfully employed after the termination of their services. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioners Baldev Singh and Inder Singh are not entitled to any back-wages. Hence, this issue is decided accordingly.

Issue No. 7 :

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner union has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues no.1 to 7, the claim of the petitioner union succeeds and is hereby partly allowed and the petitioners Baldev Singh and Inder Singh are ordered to be reinstated in service forthwith with seniority and continuity. However the petitioners Baldev Singh and Inder Singh are not entitled to back wages and as such the reference is partly answered in favour of the petitioner union and against the respondent. It is also ordered that the original award be placed on record in reference no. 87 of 2009 and authenticated copy of the same be placed in reference no. 98 of 2009. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

1. Ref. No. 87 of 2009
   Instituted on 10-11-2009
   Decided on 30-12-2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP …*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP. ...*Respondent.*

2. Ref. No. 98 of 2009
   Instituted on 18.11.2009
   Decided on 30.12.2017

Cosmo Karamchari Sangh, Jabli, District Solan, HP. …*Petitioner.*

VERSUS

The General Manager M/s Cosmo Ferrites Ltd., Jabli, District Solan, HP …*Respondent.*

References under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vishal Panwar, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

This award shall dispose of the above mentioned consolidated claim petitions filed by the petitioner union arising out of reference no. 87 of 2009 and 98 of 2009, received from the appropriate government, the terms of which are similar and reads as under :

"Whether the Demand Notice dated 1-4-2009 (Copy enclosed) raised by the President/General Secretary, Cosmo Karamchari Sangh (Reg. NO.-514), Jabli, District Solan, H.P., before the management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., is maintainable, legal and justified? If yes, to what benefits the workmen of the factory are entitled to?"

"Whether the dismissal order dated 21-3-2009 of Shri Baldev Singh s/o Late Shri Mohan Lal, Senior Technician and dismissal orders dated 17-10-2008 of Shri Inder S/o Shri Agru Ram, Operator issued by the General Manager of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P., after serving charge sheets and holding enquiry is legal and justified? If not what back wages, service benefits and relief Shri Baldev Singh s/o Late Shri Mohan Lal, Senior Technician and Shri Inder s/o Shri Agru Ram, Operator are entitled to?"

"Whether the strike of about 171 workmen *w.e.f.* 19-7-2009 to 18-8-2009 in the factory of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P. is legal and justified? If yes, to what wages and relief the workmen on strike for strike period are entitled to from the

Management of M/s Cosmo Ferrites Ltd. Jabli, District Solan, H.P.? If not, then what legal service effects upon the workmen continuing on strike?"

2. Consequent upon the receiving of aforesaid reference, the Cosmo Karamchari Union (hereinafter referred as to petitioner union) has filed the claim petition averring therein that registered employees union having its registration no. 514, Shri Baldev Singh and Jiwan have been authorized to pursue the present matter before this court. It has further been averred that on 1-4-2009 the union has submitted a demand charter before the respondent management wherein two sets of demands were raised. First was to re-instate the President Shri Baldev Singh and worker Shri Inder Singh who's services were dismissed by the respondent management in an illegal manner *vide* dismissal orders dated 21-3-2009 and 5-11-2008 and the second demand in respect of increase in pay, allowance of workers and improvement in their service conditions. That Baldev Singh was initially appointed as Senior Technician on 2-4-2001 and he was getting monthly salary of Rs. 7301/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and never had been served with any show cause notice and that in the month of January 2008 he was elected as President of the union and subsequently at many occasions he raised legal actions and proceedings before the competent authorities against the respondent management. As a result of which the management got annoyed with him and there by hatched conspiracy by terminating him from service in an illegal manner by serving a show cause notice on 12-1-2009 wherein it has been alleged that he had got published a false news in the news paper and that on 13-1-2009 another show cause notice was served upon Baldev Singh wherein it has been mentioned that he has submitted the false submission/declaration in his application form for employment. It is further stated that both the show cause notices were replied by Baldev Singh stating there in that the entire allegations have been imposed by the respondent just to harass and to victimize him and thereafter an enquiry was conducted against Baldev Singh by appointing an enquiry officer who conducted the enquiry proceedings contrary to the settled principles of natural justice and under the influence of the management and even the objection submitted in respect of the appointment enquiry officer *vide* letter dated 10-9-2009 had not been considered by the respondent management. It is stated that workmen Inder Singh was initially appointed as an operator in the month of August, 2000 and granted with the monthly salary of Rs. 3886/- and during his entire 8 years of service career he kept on working to the entire satisfaction of his superior and that on 11-7-2008 a suspension order was served upon Inder Singh vide which the management had imposed false allegations that on 9th July, Inder Singh was roaming in Packing Department without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal which was replied on 15-7-2008 by Inder Singh and the enquiry proceedings held against him were contrary to the settled principles of natural justice and under the influence of the management of the respondent. It is further averred that due to his illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well to the management for reschedule/stopping of enquiry proceedings but that request was turned down by overlooking the medical certificates submitted by Inder Singh. That due to his illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well as to management for reschedule/stopping of enquiry proceedings but that request was turned down without any justification and by mere saying that the doctor of ESI hospital has given the wrong certificate and thereby carried out the enquiry proceedings without associating Inder Singh. That in both the cases of Baldev Singh and Inder Singh the enquiry has been conducted in a biased manner against the set principles of natural justice and under the influence of management of respondent company. Hence, the dismissal order of both Baldev Singh and Inder Singh is illegal and arbitrary one and is liable to be quashed and set aside. That when the request of both the workers Baldev Singh and Inder Singh as well as of entire 171 workers did not fell on the deaf ears of the management, they left with no other alternative but to resort to strike *w.e.f.* 19-7-2009 to 18-8-2009 after serving the notice under section 22 of the Act. Since, the action of the respondent company in dismissing the services of Baldev Singh and Inder Singh are arbitrary, hence, strike of 171 workers cannot be termed as illegal. In respect of second demand, it

is averred that the petitioner union had demanded that old grading system should be replaced by new grade system and every worker should be given with the increase of minimum wages of ₹ 3,000/- per month. That the petitioner union was compelled to raise the dispute vide demand notice dated 1-4-2009 challenging the dismissal order of Baldev Singh and Inder Singh *vis-à-vis* other issues and the conciliation meeting also got failed and ultimately the appropriate government referred the dispute to this Court. On the basis of these averments the petitioner prayed that the reference be answered in affirmative by issuing directions to the respondent company to reinstate the services of Baldev Singh and Inder Singh with retrospective effect alongwith all the consequential benefits including back-wages besides continuity of service and further to pay wages to 171 workmen for the period *w.e.f.* 19-7-2009 to 18-8-2009.

3. The respondent contested the petition by filing reply wherein preliminary objections have been taken that the reference is neither competent nor maintainable, that the demand notice dated 1-4-2009 raised by Baldev Singh is neither competent nor maintainable, that the reference deserves to be dismissed as the services of Baldev Singh and Inder Singh were dismissed after conducting proper enquiry. On merits, it has been averred that the resolution dated 12-7-2008 is totally false and fictitious and the claim petition has not been filed by authorized representative. That the demand notice could not have given by Baldev Singh as he was dismissed on 21-3-2009 and there was no employer and employee relationship. That the second set of demands in respect of increase of pay allowances, improvement of service conditions, giving of loans, attendance, award etc., are totally baseless, false and fictitious and the petitioner union is not entitled to any of the said benefits/demands raised. That a show cause notice-*cum*-chargesheet dated 12-1-2009 having been served on Baldev Singh in respect of the misconduct of insubordination, making false statements in the press, loss of confidence and suspending him with immediate effect are matter of record. That Baldev Singh participated in the enquiry and produced his witnesses, cross-examined the witnesses of respondent company and even submitted the written arguments and the enquiry officer conducted the enquiry in a just, proper and fair manner. That during the enquiry the misconduct leveled *vide* chargesheet dated 12-1-2009 and chargesheet dated 13-1-2009 stood duly proved. The service of Baldev Singh was dismissed after conducting a fair enquiry. That the work and conduct of Inder Singh was not satisfactory and the misconduct qua Inder Singh was major misconduct which was on the basis of incident which happened on 9-7-2008 in A shift when Inder Singh was roaming in packing department without permission and threatened Prakash Chand and Leela Kaushal. That the enquiry conducted against Inder Singh was as per the principles of natural justice and fair hearing and the procedure prescribed in the Standing Orders of the company. That the strike which was done was illegal, unjustified and bad in law as it was done during the conciliation proceedings which resulted in financial loss to the respondent company. That the demands so raised in the demand charter dated 1-4-2003 are totally wrong, baseless and devoid of merits. On the basis of these averments, the respondent prayed for the dismissal of the claim petition.

4. In rejoinder, the petitioner union controverted the assertions made in the reply and reaffirmed the averments of the claim petition :—

5. On the pleadings of the parties, the following issues were framed by this Court on 27-10-2010 in both the references.

(1) Whether the demand notice dated 1-4-2009, raised by President/General Secretary, Cosmo Karamchari Sangh, Jabli, District Solan, H.P. before the management of respondent is legal, maintainable and justified as alleged? …*OPP.*

(2) If issue no.1 is proved in affirmative, to what service benefits the workmen of the factory are justified as alleged? …*OPP.*

(3) Whether the services of S/ShriBaldev Singh s/o Late Shri Mohan Lal and Inder Singh s/o ShriAgru Ram, have been dismissed *vide* order dated 21-3-2009 and 17-10-2008 respectively without holding a fair and proper enquiry against the provisions of the natural justice as alleged? …*OPP.*

(4) If issue no. 3 is proved in affirmative to what service benefits the aforesaid Baldev Singh & Inder Singh, are entitled to? …*OPP.*

(5) Whether the strike by about 171 workmen *w.e.f.* 19.7.2009 to 18.8.2009 in the factory of the respondent is legal and justified as alleged? …*OPP.*

(6) If issue no.5 is proved in affirmative to what wages and relief, the workmen, on strike, are entitled to? …*OPP.*

(7) Whether the claim of the petitioner union is neither competent nor maintainable as alleged? …*OPR.*

(8) Relief.

6. Vide order dated 15-10-2012, the reference petition no. 98 of 2009 was consolidated with reference petition no. 87 of 2009 and it was further ordered that both the petitions shall be disposed of by a single award.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Decided accordingly.

Issue no. 2 Becomes redundant.

Issue no. 3 Yes.

Issue no. 4 Entitled to reinstatement with seniority and continuity but without back wages.

Issue no. 5 Decided accordingly.

Issue no. 6 Becomes redundant.

Issue no. 7. No.

Relief : Reference partly answered in favour of the petitioner union and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue no.1 & 5:

9. Being interlinked and correlated both these issues are taken up together for decision.

10. In support of these issues, the petitioner union examined PW-2 Shri Sat Parkash, who produced on record the settlement dated 19-5-2012 Ex. A vide which the terms of reference at

serial no. 1 and 3 of reference no. 87 of 2009 and reference no. 90 of 2009 stood settled. He deposed that this settlement took place before the Labour Officer on 19-5-2012 as per section 12 (3) of the Act. He also tendered in evidence the union resolution Ex. B, letter dated 5.12.2012 Ex. C and letter dated 4-5-2012 Ex. D. He further deposed that as per the aforesaid settlement the workers are getting everything and now they have no dispute with respect to terms of reference at serial no. 1 & 3.

11. Therefore, in view of the aforesaid statement of PW-2, it has become clear that the terms of reference at serial no. 1 & 3 of both the references stand settled. Moreover, this Court had also passed an order regarding the settlement of terms of reference at serial no. 1 & 3 on 15.10.2012 which reads as under:

> "**At this stage a joint application under section 151 CPC was filed with the prayer to bring on record the settlement arrived at between the parties qua 1 and 3 of the reference. In the interest of justice, the request is allowed. Consequently, the settlement arrived at between the parties is brought on record and the relevant documents Ex. A to Ex. D are also brought on record. The final award in both the petitions shall be passed in view of the aforesaid settlement."**

Hence, in view of the settlement dated 19.5.2012 Ex. A, both these issues are decided accordingly.

Issues no. 2 & 6 :

12. In view of my findings on issues no. 1 and 5, these issues become redundant.

Issues no. 3 :

13. In support of this issue Shri Baldev Singh appeared into the witness box as PW-1 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he got news item published in "Dainik Bhaskar" that the company was pressuring the employees to putting their resignation and go on leave and that the wages would be paid on 1-1-2009. He denied that the enquiry was conducted according to standing orders without bias and he was given opportunity of being heard.

14. Shri Inder Singh appeared into the witness box as PW-3 and tendered in evidence his affidavit wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that he replied to the chargesheet dated 11.7.2008 and thereafter an enquiry was conducted against him. He denied that certificate Ex. R-1 has been obtained falsely from the IGMC hospital. He admitted that he received letters Ex. X-3 to Ex. X-5 from the management. He denied that after enquiry notice mark Z-1 and enquiry report Ex. X-6 was received by him. He admitted that he filed reply Ex. X-7 to second show cause notice. He further admitted that termination order Ex. X-7 was received by him through registered letter. He denied that the enquiry officer had conducted a fair enquiry against him in accordance with law.

15. Shri Jivan Singh appeared into the witness box as PW-4 and tendered in evidence his affidavit Ex. PW-4/1. In cross-examination, he denied that the action taken against Baldev Singh by the management was in accordance with rules and standing orders. He admitted that proper opportunity was granted to Baldev Singh to put forth his defence in the enquiry.

16. PW-5 Shri Kuldeep Singh also tendered in evidence his affidavit Ex. PW-5/1 wherein he reiterated almost all the averments as stated in the claim petition. In crossexamination he denied

that Baldev Singh had no authority to raise the demand notice dated 1-4-2009. He denied that when they resorted to strike on 19-7-2008, the conciliation proceedings were not pending. He admitted that the terms no. 1 & 3 of the reference have been settled. He further denied that Baldev Singh was afforded full opportunity to defend himself during enquiry. He denied that the services of Baldev Singh and Inder Singh have been terminated legally.

17. On the other hand, the respondent examined two RWs. Shri Ravi Luthra, Assistant Manager, HR with respondent company appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of GPA Ex. R-1, letter dated 19-2-2009 Ex. R-2, notice dated 2-1-2009 Ex. R-3, committee meeting dated 13-1-2009 Ex. R-4, termination letter Ex. R-5, letters dated 31-3-2009 and 10-6-2009 Ex. R-6 and Ex. R-7, letter dated 12-8-2009 Ex. R-8, enquiry proceedings dated 14-8-2009 Ex. R-9, letter dated 14-10-2008 Ex. R-10, letter dated 10.4.2008 Ex. R-11, two letters dated 23.9.2008 Ex. R-12, enquiry proceedings Ex. R-13 to Ex. R-16, letter issued by Arun Yadav Ex. R-17, show cause notice dated 11-10-2008 Ex. R-18, letter regarding enquiry report dated 8.10.2008 Ex. R-19, news item of paper cutting mark A-1, letter dated 3-2-2009 mark A-2, notice dated 12.1.2009 mark A-3, enquiry proceeding dated 11-8-2008 mark A-4, letter dated 12-8-2008 mark A-5 and proceedings of disciplinary committee mark A-6. In cross-examination, he admitted that Baldev Singh had submitted the demand charter in January 2008 before the management. He denied that show cause notice dated 12-01-2009 was issued to Baldev Singh as he refused to withdraw the demand charter. He further denied that false allegations were made against Baldev Singh. He admitted that during the enquiry proceedings against Baldev Singh he was representing the management. He admitted that the workers union had displayed on their own notice board whereby it was mentioned that one line of news item has been wrongly published by the reporter of the newspaper *vide* mark A-7. He denied that the enquiry against Inder Singh was initiated on wrong facts. He further denied that the enquiry conducted against Baldev Singh and Inder Singh was in violation of the principles of natural justice.

18. RW-2 Shri Laxmi Dutt Sharma also tendered in evidence his affidavit Ex. RW-2/A wherein it has been stated by him that he was appointed as an enquiry officer *vide* letter dated 16.7.2008 to conduct the domestic enquiry in respect of charges levied against Inder Singh and he intimated his appointment as an enquiry officer to Inder Singh and management and fixed the date of enquiry. He further stated that he conducted the enquiry as per the procedure prescribed under the certified standing orders of the respondent company. He also stated that he gave all the opportunities to Inder Singh to put forth his case. He also tendered in evidence letters dated 12.8.2008 mark X-1 and mark X-2, letter dated 14-8-2008 mark X-3, letter dated 14.8.2008 mark X-4, enquiry proceedings dated 14-8-2008 mark X-5, letter dated 4-9-2008 mark X-6, letter dated 3-9-2008, mark X-7, letter dated 20-9-2008 and registered AD receipt mark X-8, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23.9.2008 mark X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. In cross-examination he denied that he had not explained the procedure to the chargesheeted worker at the time of commencement of the enquiry. He further denied that he had not conducted the enquiry in accordance with the principles of natural justice. He admitted that Inder Singh had submitted a protest letter during the enquiry. He further admitted that no letter was given to the defence assistance of Inder Singh regarding his non-appearance in the enquiry. He denied that enquiry proceedings were conducted as per the wishes of the management. He further denied that he had not given the enquiry report on the basis of the chargesheet.

19. I have closely scrutinized the entire evidence on record and from the closure scrutiny thereof it has become clear that Baldev Singh was initially appointed as senior technician on 2-4-2001 on a monthly salary of ₹ 7301/-. On 12-1-2009 a show cause notice-*cum*-chargesheet was

served upon him with the allegations that he got published a false news in the news paper by giving information that the company is disbursing salary on 1-1-2009 and pressurizing the employees to give resignation or to go on compulsory holidays/vacations which news was contrary to the actual meeting and decision and due to this false news the company has suffered a huge monitory loss and this act of misconduct committed by Baldev Singh falls under Clause no. 22 (c), 27 (1), 34 of the Certified Standing Orders of the company. On 13-1-2009, another chargesheet was served upon Baldev Singh wherein it has been mentioned that Baldev Singh has submitted the false information/declaration in his application form for employment and the same is misconduct under Clause no. 27 (59) of the Certified Standing Orders of the company. That Baldev Singh had submitted reply to both the show cause notices and being unsatisfied with the reply filed by him, the respondent company initiated an enquiry against him by appointing an enquiry officer. That thereafter, Baldev Singh submitted objections qua holding of enquiry and then the management decided to conduct domestic enquiry afresh. Thereafter, fresh enquiry was conducted by the enquiry officer and Baldev Singh participated in the enquiry and during the enquiry the misconduct leveled *vide* show cause notice-*cum*-chargesheet dated 12.1.2009 and chargesheet dated 13.1.2009 against him stood duly proved and on the basis of enquiry report the service of Baldev Singh was dismissed on 21.3.2009.

20. The learned counsel for the petitioner next contended that the enquiry officer has not conducted the enquiry against Baldev Singh in a fair and proper manner and the principles of natural justice were also not followed during the enquiry proceedings. In **K.L Tripathi** Vs. **State Bank of India and ors. AIR 1984 SC 273** while dealing with the concept of natural justice in the back-drop of departmental proceedings, it has been held as under :

> ‘‘It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed.”

In Maharashtra State Board of Secondary and Higher Secondary Education v. **K. S. Gandhi and Others (1991) 2 SCC 716**, the Hon‟ble Apex Court laid down that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. The relevant para of the aforesaid judgment is reproduced as under:

> “37. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.……The standard of proof is not proof beyond reasonable doubt but the

preponderance of probabilities tending to draw an inference that the fact must be more probable.

The aforesaid decision was relied upon by the **Hon'ble Supreme Court in AIR 2005 S. C. 570 titled as Cholan Roadways Ltd.** Vs. **G Thirugnanasambandam**, wherein it has been observed as under:

> "17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum."
> "18……."
>
> "19. It is further trite that the standard of proof required in a domestic enquiry *vis-à-vis* a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative."

21. From the aforesaid decisions of the Hon"ble Supreme Court, it has become quite clear that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law and strict rules of Evidence Act do not apply to domestic enquiry. Now, in the light of the aforesaid decisions of the Hon'ble Supreme Court, it has to be seen in the present case as to whether there was any violation of principles of natural justice in the enquiry held against the petitioner Baldev Singh. While appearing into the witness box as PW-1, Baldev Singh in his affidavit dated 24-7-2011 deposed that the enquiry officer has acted in an illegal, discriminatory, unjust and capricious manner without appreciating the real facts and evidence on record so put forth by him. He also deposed that the enquiry officer had not given him adequate chance to submit the written arguments and *vide* letters dated 7-3-2009 and 10-3-2009, he requested the enquiry officer to give him 15 days time to submit the defence arguments but to the contrary the enquiry officer closed the enquiry on 12-3-2009 and submitted the enquiry report on 13-3-2009 before the management of the company. However, in cross-examination he admitted that he participated in the enquiry and the daily proceedings used to be got signed from him. He also admitted that two days time was given to him for filing written arguments. The onus was upon the petitioner to prove that the enquiry was not conducted in a fair and proper manner. It is a settled law that obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegations and seeking the redressal must seek an opportunity to lead evidence. In the present case, the petitioner has pleaded that the enquiry was not conducted against him in a fair and proper manner. However, to substantiate these allegations, except for his bald statement, no other evidence has been led by him. PW-4 Jeewan Singh also admitted in cross-examination that proper opportunity was given to Baldev Singh to put forth his defence. The perusal of the enquiry proceedings reveals that the petitioner had participated in the enquiry proceedings, produced his witnesses and also cross-examined the witnesses of respondent and he even submitted his written arguments. I have gone through the enquiry proceedings as well as enquiry report and in the absence of any cogent evidence adduced by the petitioner, it cannot be said that the enquiry against Baldev Singh was not conducted in a fair and proper manner and there had been any violation of principles of natural justice as contended by the learned counsel for the petitioner.

22. From the perusal of the record it has become clear that the petitioner Inder Singh was initially appointed as an operator in the month of August 2000 with the monthly salary of ` 3886/- and on 11-7-2008 a suspension order was served upon him *vide* which the management had imposed allegations against him that on 9th July in "A" shift he was roaming in packing department

without permission and threatened Mr. Prakash Chand and Ms. Leela Kaushal and thereby committed a major misconduct under clause no. 27, 25, 51 of the Certified Standing Orders of the company. That in pursuance to the suspension order Inder Singh submitted his detailed reply and since his reply was not found satisfactory the respondent took a decision to hold a domestic enquiry against him and thereafter an enquiry officer was appointed.Initially Inder Singh participated in the enquiry alongwith his representative Shri Jeewan Singh but after 15-9-2008, he did not participate in the enquiry and was proceeded against *ex-parte* and on 7-10-2008, the enquiry proceedings were carried out by the enquiry officer without associating Inder Singh and then the enquiry report was submitted by the enquiry officer and on the basis of the enquiry report, the services of Inder Singh were dismissed. The learned counsel for the petitioner contended that due to illness, Inder Singh had written letters on 18-9-2008, 30-9-2008 and 8-10-2008 to the enquiry officer as well as to the management for reschedule/stopping of enquiry proceedings but that request was turned down and the medical certificates submitted by Inder Singh were overlooked by the enquiry officer and he carried the enquiry proceedings without associating Inder Singh in the enquiry as such the enquiry conducted against Inder Singh is illegal and arbitrary. Therefore, it was for the petitioner to prove by leading cogent and satisfactory evidence on record that due to illness he could not participate in the enquiry proceedings and he was wrongly proceeded against ex-parte. However, except for the bald statement of Inder Singh no other satisfactory evidence has been led by him to prove that he could not participate in the enquiry due to his illness. He has failed to prove on record the medical certificates submitted by him before the enquiry officer. No Doctor was examined by him before this Court to prove that he was ill during the relevant period. On the other hand the enquiry officer categorically deposed in his affidavit Ex. RW-2/A that he wrote a letter dated 4-10-2008 to Inder Singh fixing the next date of hearing on 7-10-2008 and he also wrote to Inder Singh that on 22-10-2008 at 8.00 PM, Inder Singh was seen on bike at the gate of Cosmo Ferrites alongwith other workers and he was faking illness. He also deposed that the Doctor of ESI hospital submitted that Inder Singh had not come back for further examination and the treatment and advice till date is sufficient to make him fit to resume his duties. He also deposed that medical prescription slip dated 4.10.2008 was never submitted to him during enquiry. He further deposed that Inder Singh was granted sufficient opportunity to defend himself in the enquiry but he failed to participate in the same. The petitioner Inder Singh admitted in cross-examination that after 15-9-2008 he failed to appear in the enquiry and the enquiry was adjourned for three times keeping in view his illness. He also admitted in crossexamination that he had received the letters Ex. X-3 to Ex. X-5. Therefore, from the perusal of entire evidence on record, it has become clear that the petitioner Inder Singh was well aware about the enquiry proceedings but he failed to appear in the enquiry inspite of the intimation to him by the enquiry officer. Now, the question which arises for consideration before this Court is as to whether the petitioner can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon"ble Supreme Court in a catena of judgments held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In **AIR 2008 SC (Supl.) 1542, Board of Directors H.P.T.C** Vs. **K.C Rahi**, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is stopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under :

> "……..The Tribunal also held that from the representation dated 09.08.1993 and 19.10.1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance of the principle of natural justice……".

Furthermore, **in (2008)-4 SCC 42, Pepsu Road Transport Corporation** Vs. **Rawel Singh**, it has been held as under:

"15……. We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside".

Similarly, in **(1997) 10 S.C.C 386, Ranjan Kumar Mitra** Vs. **Andrew Yule & Co. Ltd., and others** it has been observed as under :

"1. In view of the fact that the appellant's services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by him in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition."

23. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioner is estopped from raising the plea of non-compliance of principles of natural justice as he had failed to participate in the enquiry despite being aware about the enquiry proceedings. RW-2, the enquiry officer further deposed that he submitted the enquiry report to the respondent company wherein the misconduct stood duly proved against Inder Singh in the enquiry. He also tendered in evidence the enquiry proceedings dated 14-8-2008 mark X-5, enquiry proceedings dated 30-9-2008 mark X-9, enquiry proceedings dated 12-9-2008 and 23-9-2008 mark X-10 and mark X-11, forwarding letter alongwith enquiry report mark X-12 and enquiry proceedings dated 7-10-2008 mark X-13. I have gone through the enquiry proceedings as well the enquiry report Ex. X-6 and in view of the entire evidence on record and also in view of the facts and circumstances of the present case, it cannot be said that the enquiry against Inder Singh was not conducted in a fair and proper manner and there has been violation of principles of natural justice as contended by the learned counsel for the petitioner.

24. The learned counsel for the petitioner next contended that the punishment of dismissal of service of both the petitioners is disproportionate to the gravity of misconduct. The charges leveled against both the petitioners *i.e.* Baldev Singh and Inder Singh stood duly proved and their services had been dispensed with *w.e.f.* 21-3-2009 and 17-10-2008 respectively. In the opinion of this Court the dismissal of both the petitioners on the allegations leveled in the chargesheets is excessively high and disproportionate to the acts of misconducts committed by them. The charges leveled against the petitioners cannot be regarded as a grave misconduct. Now, the next question which arises for consideration before this Court is as to whether this Court can interfere in the quantum of punishment imposed by the respondent. In **(2005) 3 S.C.C 134, Mahindra and Mahindra Ltd.** Vs. **N.B Narawade,** it has been held by the Hon'ble Supreme Court that after introduction of section 11 –A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the

concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under :

> "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment." (emphasis supplied).

25. In the present case it is matter of record that the past record of both the petitioners is clean and no other misconduct has been pointed out against them. Admittedly, petitioner Baldev Singh had been engaged as senior technician and petitioner Inder Singh had been engaged as an operator. Both of them were not engaged in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Hence, in view of the entire evidence led by the parties and also in view of the facts and circumstances of the present case, this Court is of the opinion that the quantum of punishment imposed upon both the petitioners was too harsh and wholly disproportionate to their act of misconduct. Therefore, looking to the charges leveled against both the petitioners and keeping in view their past service record, the punishment of dismissal of the services of petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh *w.e.f.* 17-10-2008 is hereby set aside and quashed. Accordingly, issue no.1 is decided in favour of the petitioners and against the respondent.

Issue no. 4 :

26. Since, I have held under issue no.3 above that the action of the respondent to terminate the services of the petitioner Baldev Singh *w.e.f.* 21-3-2009 and Inder Singh *w.e.f.* 17-10-2008 is illegal and unjustified, hence, both the petitioners are held entitled to reinstatement in service with seniority and continuity.

27. Now, the question which arises for consideration, before this Court is as to whether the petitioner Baldev Singh and Inder Singh are entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon"ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

28. Moreover, both the petitioners Baldev Singh and Inder Singh were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of

their services. The initial burden is on the workman/employee to show that they were not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C Sharma** that:

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

29. In the present case, both the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination/ disengagement. Even, both the petitioners in their deposition before the Court have failed to state that they were not gainfully employed after the termination of their services. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioners Baldev Singh and Inder Singh are not entitled to any back-wages. Hence, this issue is decided accordingly.

Issue No.7:

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner union has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues no.1 to 7, the claim of the petitioner union succeeds and is hereby partly allowed and the petitioners Baldev Singh and Inder Singh are ordered to be reinstated in service forthwith with seniority and continuity. However the petitioners Baldev Singh and Inder Singh are not entitled to back wages and as such the reference is partly answered in favour of the petitioner union and against the respondent. It is also ordered that the original award be placed on record in reference no. 87 of 2009 and authenticated copy of the same be placed in reference no. 98 of 2009. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P.Industrial Tribunal-cum-
Labour Court, Shimla.

29.12.2017.
Present: None for petitioner

Shri Rahul Mahajan, Advocate for respondent

As per the Track Consignment report, notice issued to the petitioner at his permanent address of District Chamba has been duly served. Case called twice but none appeared for petitioner. It is 10.50 A.M. Be awaited.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court,*
Shimla.

Case called again.

Present: None for petitioner
Shri Rahul Mahajan, Advocate for respondent.

It is 12.45 P.M. Case called again but none appeared on behalf of petitioner. Be called after lunch.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for petitioner
Shri Rahul Mahajan, Advocate for respondent

It is 3.20 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any counsel on his behalf has appeared before this Court despite the fact that as per Track Consignment report, the notice issued through registered post for the service of the petitioner had been delivered at the permanent addresses given in the reference itself. The record further reveals that earlier the notices have been issued to the petitioner at the address of Tehsil Paonta Sahib of District Sirmour, HP given in the referene. However, despite the service of notice, the petitioner has failed to appear before this Court which clearly shows that the petitioner is not interested to pursue his case. Hence, this Court is left with no other alternative but to decide the case on the basis of material whichever is available on file. The following reference has been sent by the appropriate government for adjudication to this Court :

"Whether the contention of Shri Rakesh Thakur s/o Shri Prem Chand Thakur r/o Village Kunbag, P.O Baat, Tehsil & District Chamba, HP (Correspondence address: C/o Shri Jagdish Verma, House No. 173/69, Ward no.11, Moginand, Tehsil Paonta Sahib, District Sirmour, HP regarding his illegal termination of services w.e.f. 17.5.2016 by way of taking resignation under duress by the management of M/s Akron India Pvt. Ltd., Nihalgarh, Tehsil Paonta Sahib, District Sirmour, HP after receiving his full and final dues from the said management is legal and justified? If yes, what relief including reinstatement amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

As per the reference, the petitioner has alleged his termination *w.e.f.* 17-5-2016 to be illegal by way of taking resignation under duress by the management but despite having been served the petitioner failed to appear before this Court and to file statement of claim. Therefore, for the failure of the petitioner to appear before this Court and to pursue the case arising out of reference, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Hence, the reference sent by the appropriate government for adjudication to this Court is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
29.12.2017.

(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

28.12.2017.

Present: None for petitioner.
Shri Prateek Kumar, Advocate vice csl. for respondent

It is 10.45 A.M. Case called twice but none appeared on behalf of petitioner. Be awaited

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

Case called again.

Present: None for petitioner.
Shri Prateek Kumar, Advocate vice csl. for respondent.

It is 12:40 AM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

Case called after lunch.

Present: None for the petitioner.
Shri Prateek Kumar, Advocate vice csl. for respondent.

It is 3.15 P.M. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but neither the petitioner nor his counsel appeared before this Court in order to file the statement of claim. The record reveals that this case is being listed for filing of claim from 6.9.2017 but despite having availed various opportunities, the petitioner failed to file the claim petition and to appear before this Court which clearly shows that the petitioner union is not interested to pursue the case arising out of the reference. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication :

"**Whether demand of Shri Kamal Dev Sharma Senior Electrician raised though Himachal Hotel Mazdoor Lal Jhanda Union (affiliated to CITU), 9, Bawa Building, The Mall, Shimla-3 *vide* demand notice dated 28.3.2016 (copy enclosed) for fulfillment before (i) The Employer/Manager M/s A.B Tools Company Shimla, (ii) The Employer/Manager Marigold Sarovar Portico, Village Sadhora, Mashobra Hills-Naldehra Road, P.O Baldian, District Shimla 171007 regarding enhancement of his salary at par/above Shri Kamaljeet Singh, Electrician who is junior to him is legal and justified? If yes, to what financial ?"**

From the aforesaid reference is the clear that the petitioner union has raised demand vide demand notice dated 28-3-2016 before and to be fulfilled by the Employer/respondents but despite having been afforded various opportunities in order to file statement of claim, the petitioner union failed to file any claim and to appear before this Court. Therefore, in the absence of any material on record, it cannot be said that the demand raised *vide* demand notice dated 28-3-2016 before and to be fulfilled by the Employer/respondents are legal and justified. Hence, the reference is answered against the petitioner union and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Announced:
28.12.2017

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL -CUM-**LABOUR COURT, SHIMLA**

Ref. No. 71 of 2016
Instituted on 4.8.2016
Decided on 20.12.2017

Jitender Singh s/o late Shri Bahadur Singh r/o Village Palkadi, P.O Dhami, Sub Tehsil Dhami, District Shimla, HP …*Petitioner.*

VS.

The Divisional Forest Officer, Mist Chamber, Khalini, Shimla, District Shimla, HP.
...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate
For respondent : Shri Mahinder Singh, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Jitender Singh s/o Late Shri Bahadur Singh, r/o Village Palkadi, P.O Dhami, Sub-Tehsil Dhami, District shimla HP during December 1998 by the Divisional Forest Officer, Mist Chamber, Khalini Shimla District Shimla HP, who allegedly worked in the Forest Department as beldar during 1996 to 1998 and has raised his industrial dispute after about 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? Whereas the employer denied the working of Shri Jitender Singh in the Forest Department, if not justified keeping in view the contention of employer and delay of about 16 years in raising the alleged industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged as daily wages beldar by the respondent in the month of Jan., 1996 under forest range Dhami and worked as such till the year 1997 and thereafter he worked under Range Officer Mashobra at Check Post Dhalli till December 1998 and then his services were terminated illegally without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as neither any notice has been given to him nor any retrenchment compensation was paid to him. It is further stated that after his illegal termination, the petitioner visited the office of respondent number of times and requested to re-engage him but despite assurance he was not re-engaged. It is also stated that the petitioner had completed 240 days in each calendar year and that the junior person namely Jagdish, Bali Ram, Shyam Lal, Basu Dev, Chet Ram, Lachhi Ram, Jawhar, Amar and Hukum Chand are still working with the respondent whereas the services of the petitioner were dismissed in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. It is stated that the work which the petitioner was performing with the department is still available as the junior persons have been retained and new persons have also engaged. That the petitioner is unemployed *w.e.f.* 1.1.1999 and is nowhere gainfully employed as such the respondent is bound to pay full salary to him. Against this back-drop it has been prayed that the oral termination order of the petitioner *w.e.f.* 31.12.1998 be set aside and the respondent be directed to re-engage the petitioner with full back-wages and other service benefits including seniority and continuity. It has further been prayed that the respondent be directed to regularize the services of the petitioner as he had already completed the required eight years of service as per the policy of the State Government.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability and that the claim is barred by limitation. On merits, it has been asserted that the petitioner was never engaged as daily wager in the respondent department during 1996 to 1998, hence, the question of his oral termination and engagement of his juniors does not arise. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 20-1-2017: —

1. Whether the termination of the services of petitioner during December, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? …*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?

3. Whether the petition is not maintainable as alleged? …*OPR.*

4. Whether the petition is barred by limitation as alleged? …*OPR.*

5. Relief

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 No.

Issue no. 4 Yes.

Relief: Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues no.1 & 4.

7. Being interlinked and correlated both these issues are taken up together for discussion and decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, Learned ADA for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the petitioner was never engaged as daily wager in the respondent department during 1996 to 1998, hence, the question of his oral termination and engagement of his juniors does not arise at all.

10. To prove issue no.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-1/B. In cross-examination, he denied that he was not engaged as daily wager by the respondent. He further denied that he had not worked as a daily wager even for a single day. He also denied that the respondent had not given him any assurance to re-engage him.

11. PW-2 Shri Prem Lal, Range Officer Dhami has stated that vide authority letter Ex. PW-2/A he has been authorized to depose in this case. He further stated that he has not brought the

muster roll for the period from January 1996 to December 1997 as the same is not available in their office being old record and he has also not brought the muster rolls *w.e.f.* January 1998 to December 1998 of Forest Range Mashobra as their office is not the custodian of the record of Mashobra Forest Range. In cross-examination, he admitted that the petitioner had not worked as a daily wager even for a single day and in the seniority list brought by him *w.e.f.* the year 1988 to 1999, the name of the petitioner is not mentioned anywhere.

PW-3 Shri Hukum Chand has stated that in the year 1996-97, he was working under Dhami Forest Range and the petitioner used to do work under Forest Range Dhami in the year 1996-97 and after the year 1997, he was not working under Dhami Forest Range. In cross-examination he denied that the petitioner was not working as a daily wager with the respondent. He further denied that he had never worked with the respondent in the year 1996-1997.

Shri Jawhar Singh appeared into the witness box as PW-4 to depose that from the years, 1995 to 1998, he was working in the Forest Range Mashobra and the petitioner was working as Forest worker in the year, 1997-98 under Mashobra Range and thereafter he was terminated. In cross-examination he denied that the petitioner had never worked with the respondent and therefore he was never terminated.

12. On the other hand, the respondent has examined one Shri Madan Gopal, Deputy Ranger, Forest Range Dhami as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed by respondent. In cross-examination he admitted that Hukum Chand was working in Ghanatti Block. He expressed his ignorance that Jawahar Singh was also working in Mashobra Range. He admitted that the department had engaged fresh hands since the year, 1998 till date. He further admitted that no notice was given to the petitioner prior to his termination. He also admitted that no compensation was paid to the petitioner and that before engaging fresh hands no letter was issued to the petitioner to join his duties. He denied that the petitioner had worked for more than 240 days in each calendar year.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was never engaged by the respondent department during the year, 1996 to 1998. It was for the petitioner to prove and establish on record that he was actually engaged by the respondent department, however, except for the bald statement of the petitioner, no evidence has been led by him to prove that he was engaged by the respondent department in the month of Jan., 1996 as daily waged beldar. No documentary evidence has been placed on record in this respect. Even, PW-2, Range Officer Dhami in his cross-examination has admitted that the petitioner has not worked as a daily wager for a single day. He further admitted that in the seniority list *w.e.f.* 1998 to 1999, the name of the petitioner is not mentioned anywhere. Though PW-3 deposed that the petitioner used to do the work in Dhami Range in the year, 1996-97 and PW-4 deposed that the petitioner was working as a forest worker in the year, 1997-98 in Mashobra Range. However, no document has been placed on record by them in order to show that the petitioner was engaged as a daily wager by the respondent. In the absence of any documentary evidence on record, the statements of PW-3 and PW-4 cannot be relied upon. On the other hand, RW-1 Dy. Ranger has specifically stated in his affidavit Ex. RW-1/A that as per the official record the petitioner had never worked in the forest department nor he was enrolled as daily wager in any calendar year. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was engaged as a daily wager by the respondent department in the year, 1996.

14. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the

Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated during the year 1999 but he has failed to produce on record any material which could go to show that he had worked with the respondent till 1999. As per reference sent by the appropriate government to this Court the services of the petitioner were allegedly stated to be terminated during 1998. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. In **(2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under :

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. In **Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under :

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In **Haryana State Coop. Land Development Bank** Vs. **Neelam reported in (2005) 5 SCC 91,** the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour Court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under :

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced there from Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. "In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :

5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case.

Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." *(Emphasis supplied)*.

19. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under :

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a

reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. In Assistant Engineer, CAD Kota Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.''

22. In **(2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. In a recent judgment of our **Hon'ble High Court delivered in CWP no. 1912 of 2016 titled as Bego Devi** Versus **State of HP and others decided on 26-10-2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, since the petitioner has raised the present dispute after a period of more than 16 years, therefore, it was for the petitioner to prove that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. Since, the petitioner has failed to establish on record that he was actually engaged by the respondent department as daily wages beldar and the reference has been proved to be stale and belated, therefore, no protection of sections 25-F, 25-G and 25-H of the Act can be granted to the petitioner. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are decided accordingly.

Issue no. 2 :

27. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no. 3 :

28. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. No. 38 of 2007
Instituted on 21-4-2007
Decided on 29-12-2017

1. Pushpinder Kumar s/o Shri Ram Lal, r/o Village Chaha, P.O. Masul Khana, Tehsil Kasauli, District Solan, H.P.

2. Ashok Kumar s/o Shri Des Raj, r/o Village Naryal P.O. Taksal, Tehsil Kasauli, Distt. Solan, H.P.

3. Ranjeet Singh s/o Shri Gopal Singh, r/o Village Dubla, P.O. Patta Masul Khana, Tehsil Kasauli, Distt. Solan, H.P.

4. Bandana Sharma d/o Shri Ram Lal C/o Shri Diwan Chand, House No. 1100, Talab Mohalla Kalka.

5. Mukesh Kumar S/o Shri Diwan Chand C/o Hiten Canteen, Plot No.19-C, Sector-2, Parwanoo, District Solan, H.P. …*Petitioners.*

VERSUS

The Managing Director, M/s Ansysco, Plot No. 19-F, Sector-2, Parwanoo, District Solan, H.P. …*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate
For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference has been received from appropriate government for adjudication :

"**Whether termination of the services of (1) Shri Pushpinder Kumar S/o Shri Ram Lal (2) Ashok Kumar s/o Shri Des Raj (3) Ranjeet Singh s/o Shri Gopal Singh (4) Bandana Sharma d/o Shri Ram Lal (5) Mukesh Kumar s/o Shri Diwan Chand workmen by The Managing Director, M/s Ansysco, Plot No. 19-F, Sector-2, Parwanoo,**

District Solan, H.P. w.e.f. 15.7.2005 without complying the provisions of Industrial Disputes Act, 1947, **whereas junior to them are retained by the employer as alleged by the workmen is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?**"

2. Petitioners S/Shri Pushpinder Kumar, Ashok Kumar and Mukesh Kumar have filed separate claim petitions whereas petitioners Km. Bandana Sharma and Ranjeet Singh did not appear before this court despite valid service and failed to file any claim petition.

3. It is pleaded by S/Shri Pushpinder Kumar and Ashok Kumar that they were engaged as trainee operators by the respondent company during the period 17-03-2003 to 17-03-2004. The petitioners, thereafter, on completion of training period were kept as operators and worked till 14-07-2005. Petitioner Mukesh Kumar was engaged as operator with effect from 1-04-2002. Mukesh Kumar was kept as trainee with effect from 1-2-2003 to 1-8-2003 and thereafter worked as an operator till 14-7-2005. The petitioners have completed 240 days in a calendar year for the application of section 25-F of the Industrial Disputes Act, 1947. The services of the petitioners were terminated on 15-7-2005 on their refusal to work through a contractor. It is also alleged that the respondent had engaged new persons and junior persons to the petitioner namely Sunil Kumar, Vikram Rangra, Prinkit Sood, Uday Dogra, Ankush Katoch, Arun Sharma, Sasndeep Sharma, Mahesh Sharma, Hetesh and Seema who are still working with the respondent and thus the respondent has violated the principles of last come first go. On the basis of these averments the petitioners prayed that the impugned oral termination order dated 15-7-2005 be quashed and set aside and the respondent company be directed to reinstate the petitioners in services on the same post with full back-wages and other consequential service benefits.

4. The respondent has filed separate replies wherein preliminary objections have been taken that the petition is not maintainable as the petitioners are not workmen and were appointed as trainees, that the petition is not maintainable on the ground that the petitioners have not been issued any appointment letters by the respondents. On merits, it is stated that the petitioners were appointed as trainees for fixed term. The performance of the petitioners was not satisfactory and on their request training period was extended. The petitioners have not been issued any appointment letter and were not workmen. The petitioners were also paid their dues, compensation and one month's notice in advance. On refusal of petitioners to accept letters, the amount was sent through registered post. The respondent prayed for the dismissal of the claim petitions.

5. In the rejoinders, the petitioners controverted the assertions made in the reply and reaffirmed the averments of the petition.

6. On the pleadings of the parties, following issues were framed on 18-7-2008 :—

(1) Whether the termination of the petitioners are bad for want of mandatory provisions of Industrial Disputes Act, 1947? If so, its effect? …*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief the petitioners are entitled to ? …*OPP.*

(3) Whether the present petition is not maintainable in the present form? …*OPR.*

(4) Relief.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under :

Issue no.1 No

Issue no. 2 Becomes redundant

Issue no. 3 No

Relief : Reference answered in favour of the respondent and against the petitioners

8. It may be pertinent to mention here that on 4-1-2012, an award was passed by this Court wherein the reference was answered in negative. The said award was challenged by the petitioners before the Hon'ble High Court and *vide* order dated 19-4-2017 passed in CWP No. 1951 of 2012, the Hon'ble High Court had quashed and set aside the aforesaid award passed by this Court and the reference was remanded back to this Court with a direction to decide the same afresh after passing appropriate order on the miscellaneous application so filed under section 151 CPC.

REASONS FOR FINDINGS

Issue no. 1 :

9. Learned Counsel for the petitioners contended that the services of the petitioners were illegally terminated by the respondent without complying with the provisions of the Act despite the fact that the petitioners have completed more than 240 working days in each calendar year. He further contended that junior persons to the petitioners and fresh hands are still working with the respondent whereas their services have been terminated in violation of the provisions of section 25-G & 25-H of the Act.

10. On the other hand, Ld. Counsel for the respondent contended that the petitioners were engaged as trainees, and their training period came to an end on the completion of their training period, hence, there was no need to comply with the provisions of the Act.

11. In support of issue no.1 PW-1 Shri Pushpender Kumar stepped into the witness box to depose that he was initially engaged as Trainee operator by the respondent *w.e.f.* 17-7-2003 to 17-7-2004 and then he was appointed as machine operator on 18-7-2004 and he continued as such till 14-7-2005 and then he was asked to work under contractor which he refused and then his services had been terminated on 15-7-2005. He further stated that he had worked for more than 240 days in a calendar year preceding his termination and no notice or compensation was given to him at the time of his termination. He also stated that S/Shri Susheel Kumar, Vikram Rangra, Vikram Sood, Veena Thakur and Dhanwanti are his juniors who are still continuing with the respondent. In cross-examination he admitted that he was engaged as a trainee *vide* letter dated 16-7-2003 Ex. RA. He denied that his training period was not found satisfactory and was extended. He admitted that he was kept as a trainee by the respondent and no appointment letter was ever issued to him. He further admitted that he was undergoing diploma in 2003. He also admitted that stipend of Rs. 6568/- as compensation and one month notice has been deposited in his account.

12. PW-2 Shri Mukesh Kumar has deposed that initially *w.e.f.* 1-4-2002, he was engaged as casual worker and then *w.e.f.* 1-2-2003 to 1-8-2003 he was kept as trainee and then on 15-7-2004, he was appointed as machine operator and continued as such till 14-7-2005 and his services were terminated on 15-7-2005. He further stated that he had worked for more than 240 days in a calendar year preceding his termination and no notice or compensation was given to him at the time of his termination. He also stated that S/Shri Susheel Kumar, Vikram Rangra, Vikram Sood, Veena Thakur and Dhanwanti are his juniors who are still continuing with the respondent. In cross-examination, he admitted that he has been paid a monthly stipend of Rs. 1800/- for six months. He

further admitted that he was kept as a trainee by the respondent and no appointment letter was ever issued to him. He expressed his ignorance whether stipend of Rs. 12750/- as compensation and one month notice has been deposited in his account. PW-2 Shri Mukesh Kumar was recalled in the witness box on 5-12-2017 and had produced the identity card Ex. PW-2/A and his ESI card Ex. PW-2/B. In cross-examination he admitted that the name, designation and official stamp of issuing authority is not mentioned in the identity card Ex. PW-1/A.

13. PW-3 Shri Ashok Kumar supported the entire version of PW-1 including that *w.e.f.* 17-7-2003 to 17-7-2004, he was engaged as trainee operator by the respondent and then he was appointed as machine operator on 18-7-2004 and continued as such till 14-7-2005 and then his services were terminated *w.e.f.* 15-7-2005. He further stated that he had worked for more than 240 days in a calendar year preceding his termination and no notice or compensation was given to him at the time of his termination. He also stated that S/Shri Susheel Kumar, Vikram Rangra, Vikram Sood, Veena Thakur and Dhanwanti are his juniors who are still continuing with the respondent. In cross-examination he admitted that he was engaged as a trainee *vide* letter dated 16-7-2003 Ex. RA. He denied that his training period was not found satisfactory and was extended. He admitted that he was kept as a trainee by the respondent and no appointment letter was ever issued to him. He further admitted that he was undergoing diploma in 2003. He also admitted that stipend of Rs. 6568/- as compensation and one month notice has been deposited in his account.

14. PW-4 Shri Madan Mohan, Senior Assistant from ITI Solan has deposed that according to Rules, no training period can be extended. PW-5 Shri Ashok Sharma, Manager Accounts of respondent company deposed that Ms. Veena Thakur was appointed as trainee on 6th October, 2006 *vide* appointment letter Ex. PA, Smt, Dhanwanti Thakur was engaged as trainee on 1.3.2007, who left on September 2009 while Meena Thakur left on June, 2009. Ms. Meena Thakur has undergone environment training for two years and their company had issued a warning letter dated 31st July, 2007 to Smt. Dhanwanti. He further deposed that they did not pay any compensation to the petitioners nor they served any notice to them and they did not seek any permission for extension period of the petitioners. He also filed the detail of workmen Ex. PB. In cross-examination, he admitted that the petitioners left after completion of their training. He further admitted that they have paid the entire stipend to the petitioners.

15. Shri Kamta Prasad, SSO ESIC, Parwanoo has appeared into the witness box as PW-6 to depose that the petitioner Mukesh Kumar was the member of ESI and his insurance number is 8333890 and his employer was M/s Ansysco, Plot No. 19-E-F, Sector-2 Parwanoo, HP. He further stated that the identity card Ex. PW-2/B was issued to the petitioner by ESI. He also brought on record the declaration form Ex. PW-6/A. In cross-examination, he admitted that the particulars of family members have not been mentioned in the declaration form Ex. PW-6/A.

16. On the other hand the respondent examined one Shri Sunil Aggarwal as RW-1 who deposed that the petitioner was appointed as a trainee and after the completion of his training period certificate was issued. He further deposed that the petitioner was appointed as a trainee on monthly stipend of Rs. 6568/- *vide* letter Ex. R-1. He also deposed that after training no appointment was given to the petitioner and the petitioner had not returned to the factory after the completion of his training.

17. I have gone through the respective contention of the learned counsel for the parties and also scrutinized the entire evidence on record and from the closure security of the record of the case, it has become clear that petitioners S/Shri Pushpinder Kumar and Ashok Kumar were engaged as trainees by the respondent initially for a period of one year and petitioner Mukesh Kumar was engaged as a trainee initially for a period of six months and their training period was extended for further period of one year as their performance during the training period was not

found satisfactory. From the perusal of the record it has also become clear that petitioners Ashok Kumar and Pushpinder Kumar were to be paid fixed stipend of Rs. 2000/- per month and petitioner Mukesh Kumar was to be paid fixed stipend of Rs. 1800/- per month and their services could be terminated by giving 24 hours notice and without assigning any reason at any time. Furthermore, their traineeship did not entitle them to claim employment with the respondent as their engagement as a trainee was purely of a temporary nature and did not create any lien upon the respondent. In cross-examination, also the petitioners Pushpinder Kumar (PW-1), Mukesh Kumar (PW-2) and Ashok Kumar (PW-3) admitted that they were engaged as trainees and no appointment letter was ever issued to them. The learned counsel for the respondent contended that the petitioners were only trainees; hence, they do not fall under the definition of "workman" as defined under section 2(s) of the Act. Now, the question which arises for consideration before this Court is as to whether the petitioners fall under the definition of workman or not. This question has been considered in detail by the **Hon'ble High Court of Andhra Pradesh in its judgment 2004 LLR 387, Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad** Vs. **Chairman, Industrial Tribunal-**cum-**Labour Court, Visakhapatnam and Ors**. wherein it has been held that :

> "In Ahmedabad Mfg. & Calico Ptg., Co. Ltd *Vs.* Ramtahei, AIR 1972 SC 1598, it was held that the workers in order to come within the definition of "employee" need not necessarily be directly connected with the main industry. In K. Dasarath *Vs.* Labour Court-1, Andhra Pradesh, Hyderabad (W.P. No: 14787/1996 decided on 27.3.2002) 2002 (4) ALT 194. 2002 LLR 945, one of us (P.S Narayana. J) while dealing with the aspect of probationer and termination of services and validity thereof, had arrived at the conclusion that though the probation of the petitioner/workman was extended twice, the same cannot be taken as deemed confirmation and hence the order of termination cannot be interfered with. In M/s Kalyani Sharp India Ltd. *V.* Labour Court No.1 Gwalior, AIR 2002, SC 300, the Apex Court while dealing with the termination of service without notice of a Trainee Technician had arrived at the conclusion that such termination before the expiry of probationary period without issuance of any prior notice will not amount to retrenchment and hence the same is not legal in the said discussion, the Apex Court had referred to and followed the discussion in Escorts Ltd. Vs. Presiding Officer (1997) 11 SCC 521 and M. Venugopal *Vs.* Divisional Manager LIC of India 1994 -1 CLR 544 SC (1994) -2 SCC 323 in Kamal Kumar *Vs.* J.P S Malik, Presiding Officer Labour Court, 1998 (79) FLR 965 (Del), the Delhi High Court held:
>
> "It is no doubt true that section 2 (s) of the Act also uses the expression "apprentice", but merely using the word "apprentice" within the definition of "workman". In my considered opinion, cannot confer a right on a trainee to be called a "workman" within the meaning of section 2(s) of the Act. When the said definition is looked into closely. It is apparent that an apprentice could be a workman under section 2(s) of the Industrial Disputes Act if he is employed to do any manual, clerical, supervisory or technical work." In management of M/s Otis Elevator Company Ltd *Vs.* Presiding Officer, Industrial Tribunal-III 2003 (98) FLR 53, it was held that a trainee engaged by the petitioner-company does not fall within the definition of workman."

18. **In 2001, LLR 812, Kalayani Sharp India Ltd.** Vs. **Labour Court No. 1, Gawalior and another**, the Hon'ble Supreme Court has held that:

> "The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training. If these clauses are read together, it is clear that he was under

probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a trainee service technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period, the facility could be withdrawn at any time and he would be regularized only on completion of his training. Thus, the respondent's services were terminated before expiry of the probationary period. In such a case question of issue of notice before terminating the services as claimed by the respondent does not arise. Escort case (ide *supra*), is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the Labour Court is set aside and the claim made by the respondent is dismissed."

19. Further, in **1997 LLR 699 SC, Escorts Ltd., Vs. Presiding Officer and anr.**, it has been held by the Hon'ble Supreme Court that:

"3. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) excludes from the ambit of the expression 'retrenchment' as defined in the main part of section 2(oo) "termination" of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. "The said provisions has been considered by Court in M. Venugopal *Vs.* Sivisional Manager, LIC and anr. 1994 (2) SCC 323. The appellant in that case had been appointed on probation for a period of one year from May, 23, 1984 to May 22, 1985 and the said period of probation was extended for further period of one year from May 23, 1985 to May 22, 1986. Before the expiry of said period of probation, his services were terminated on May 9, 1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of section 2(oo)(bb) of the Act and did not constitute retrenchment. Here, also the services of the workman were terminated on February 13, 1987, as per the terms of the contract of employment contained in the appointment letter dated Jan., 9 1987 which enable the appellant to terminate the services of the workman at any stage without assigning any reason. Since, the services of the workman were terminated as per the terms of the contract of employment, it does not amount retrenchment under section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by section 25-F and 25-G of the Act."

20. Therefore, the perusal of the aforesaid judgments makes it clear that a trainee will not be a "workman" as defined under section 2(s) of the Act. In the present case also the petitioners were engaged as trainees initially for a period of one year/six months on the basis of monthly stipend and thereafter their training period was extended and on the completion of training period their training came to an end on 15-7-2005. The learned counsel for the petitioners relied upon the identity card Ex. PW-2/A, ESI card Ex. PW-2/B and declaration form Ex. PW-6/A issued to the petitioner Mukesh Kumar and contended that since the petitioner Mukesh Kumar was a worker with the respondent, therefore, the aforesaid documents have been issued by the respondent. However, this contention of the learned counsel for the petitioners cannot be accepted because in the identity card Ex. PW-2/A, it has not been mentioned that the petitioner Mukesh Kumar was working as a worker with the respondent. Moreover, the name designation and official stamp of the issuing authority has not been mentioned in the identity card Ex. PW-2/A as admitted by PW-2 Mukesh Kumar in his cross-examination. Similarly, in the ESI card Ex. PW-2/B and declaration form Ex. PW-6/A, also it has not been mentioned that the petitioner Mukesh Kumar was working

as a worker with the respondent. Moreover, the ESI card Ex. PW-2/B has not been issued by the respondent rather the same was issued by ESI as stated by PW-6 in his statement. Hence, no benefit can be derived by the petitioner Mukesh Kumar from the aforesaid documents. The petitioners admittedly have not adduced in evidence any appointment letter or any other material thereby making it evident that they were engaged as workers by the respondent company after completion of their training period. Neither the appointment letters have been placed on record by the petitioners nor confirmation letters have been placed on record by them in order to show that after the training period they were confirmed in service and they attained the status of workmen. Therefore, in the light of the aforesaid facts, it can safely be held that the petitioners were not workmen as the purpose of engagement of the petitioners was only to offer them training under the terms and conditions stipulated in the letters. The petitioners were only paid stipend which cannot be termed as wages. They were never offered employment by the respondent after the completion of their training period. In that view of matter, the petitioners will not come within the definition of "workman" as defined under section 2(s) of the Act. Therefore, in such a case, the question of issuance of notice under section 25-F of the Act does not arise at all. Similarly, it cannot be said that there is any violation of provisions of section 25-G and 25-H of the Act and no protection under these sections can be granted to the petitioners.

21. Therefore, in view of my above discussion and law laid down (*supra),* I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 15-7-2005 is not illegal and unjustified as they were only imparted training by the respondent during their training period. Since, petitioners Kumari Bandana Sharma and Ranjeet Singh have not filed their claim, therefore, in the absence of any material on record, it cannot be said that their termination is illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioners.

Issue No. 2 :

22. Since, the petitioners have failed to prove issue No.1, this issue becomes redundant.

Issue no. 3 :

23. In support of this issue, no evidence has been led by the respondent. However, the petitioners have filed the claim petitions pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with these petitions which are perfectly maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioners. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court,*
Shimla.

28.12.2017.

Present: Sh. A.K Sharma, AR for petitioner.
Sh. Yogesh Kumar, AR for the respondent.

At this stage it has been stated by the AR for the petitioner that the petitioner had settled the matter with the respondent out of court and the respondent had handed over to him a cheque today in the name of petitioner bearing No.161473, dated 09-12-2017 drawn on United Bank of India Chandigarh in the sum of Rs.18735/- (Eighteen Thousand Seven Hundred and Thirty Five) only as full and final amount of legal dues payable to the petitioner. He further stated that the petitioner has no dispute with the respondent arising out of the present reference.

Similarly it has been stated by the AR for the respondent that the respondent had settled the matter with the petitioner out of court and paid him an amount of Rs. 18735/- (Eighteen Thousand Seven Hundred and Thirty Five) only by way of cheque No. 161473, dated 09-12-2017 drawn on United Bank of India Chandigarh, which has been handed over to the AR for the petitioner today and now the petitioner has no dispute with the respondent arising out of the present reference.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
28.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

28.12.2017.

Present: Sh. A.K Sharma, AR for petitioner
Sh. Yogesh Kumar, AR for the respondent

At this stage it has been stated by the AR for the petitioner that the petitioner had settled the matter with the respondent out of court and the respondent had handed over to him a cheque today in the name of petitioner bearing No.161475, dated 09.12.2017 drawn on United Bank of India Chandigarh in the sum of Rs.14998/- (Fourteen Thousand Nine Hundred and Ninety Eight) only as full and final amount of legal dues payable to the petitioner. He further stated that the petitioner has no dispute with the respondent arising out of the present reference.

Similarly it has been stated by the AR for the respondent that the respondent had settled the matter with the petitioner out of court and paid him an amount of Rs. 14998/- (Fourteen Thousand Nine Hundred and Ninety Eight) only by way of cheque No.161475, dated 09.12.2017 drawn on United Bank of India Chandigarh, which has been handed over to the AR for the petitioner today and now the petitioner has no dispute with the respondent arising out of the present reference.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the

statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
28.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

22.12.2017.

Present: Petitioner in person
Sh. Rajeev Sharma, Ld. Csl. for the respondent

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

22.12.2017.

Present: Petitioner in person

Sh. Rajeev Sharma, Ld. Csl. for the respondent

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

22.12.2017.

Present: Petitioner in person
Sh. Rajeev Sharma, Ld. Csl. for the respondent

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

22.12.2017.

Present: Petitioner in person
Sh. Rajeev Sharma, Ld. Csl. for the respondent

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had

received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

22.12.2017.

Present: Petitioner in person.

Sh. Rajeev Sharma, Ld. Csl. for the respondent.

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22-12-2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

22.12.2017.

Present: Petitioner in person
Sh. Rajeev Sharma, Ld. Csl. for the respondent

At this stage it has been stated by the petitioner that he has entered into an out of court settlement with the respondent before the Labour Officer Baddi. He further stated that he had received his full and final legal dues from the respondent and now he has no further dispute with the respondent arising out of the present reference and the same may be disposed off as he does not want to proceed further with the present reference being compromised.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent has entered into a settlement with the petitioner before the Labour Officer Baddi and the petitioner has been paid his full and final legal dues.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties, which shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2017

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla,
Camp at Nalagarh.

IN THE COURT OF THE SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref. No. 36 of 2011
Instituted on 13.9.2011
Decided on 8.12.2017

Naginder Chand s/o Shri Nek Ram r/o Village Gurdaspur, P.O Mandhala, Tehsil Baddi, District Solan, HP. ..*Petitioner.*

VERSUS

1. M/s GMP Technical Solution through its Managing Director, Director, General Manager o/o M/s GMP Technical Solution, Village Kurawalan, P.O Mandhal, District Solan HP.

2. M/s S.S Engineer through its Prop. Manager, Authorized person, o/o M/s SS Engineer Near Bus Stand Baddi, District Solan, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Atul Pandit, Advocate

For respondent no.1 : Shri Ravinder Ravi, Advocate vice Shri Rahul Mahajan, Advocate

For respondents no. 2 & 3: Shri Kapil Thakur, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Shri Naginder Chand s/o Sh. Nek Ram, Village Gurdaspura, P.O. Mandhala, Distt. Solan, H.P. by the (i) The General Manager, M/s GMP Technical Solution, Village Kurawala, P.O. Mandhala, Distt. Solan (Principal Employer) (ii) M/s S.S. Engineers, Near Bus Stand, Baddi, Distt. Solan, H.P. (Contractor Company) verbally** w.e.f. **05-11-2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers**?"

2. Briefly, the case of the petitioner is that in the month of September, 2006, he was employed as helper by respondent No.1 through their agent *i.e*. respondent No.2 and he continued as such till 31.10.2008 and his last drawing wages were ₹ 3395/- per month. It is further stated that the work and conduct of the petitioner was more than satisfactory and as he was never asked to any explanation call, censure or show cause notice etc. That about three months before retrenchment from the service, the management was trying to make resignation from the petitioner but he always denied to do so and on 1-11-2008, when he came to the factory for duty, he was not allowed to enter the factory gate by the security guard and thereafter the petitioner tried to meet the management but of no avail and his services were terminated and thereafter on 5-11-2008, the petitioner raised an industrial dispute and during conciliation meeting some dues, wages and overtime wages were paid to the petitioner and without reaching any conclusion about the reinstatement the conciliation proceedings were ended. It is also stated that neither any notice nor compensation was paid to the petitioner. Against this back-drop a prayer has been made that he be reinstated in service with seniority and continuity along-with full back wages.

3. By filing separate reply, the respondent No.1 contested the claim filed by the petitioner wherein preliminary objections have been raised that the claim petition is neither competent nor maintainable, that there exists no employer-employee relationship between the petitioner and respondent no.1 and that the petitioner is gainfully employed. On merits, it has been asserted that in terms of agreement executed between respondent No.1 and respondent No. 2, the petitioner was a workman of respondent No.2 (contractor), who deputed the petitioner for loading and unloading work which is not of perennial nature with respondent No.1 and that the petitioner was a contractual labour and the respondent No.1 had a valid registration to employee contract labour under Contract Labour (Regulation and Abolition) Act, 1974 and HP Contract Labour (Regulation and Abolition Rules 1974 and respondent No.2 had a licence to provide the contract labour under the Contract Labour Act, hence, there exists no relationship of employer employee between the petitioner and respondent No.1. Since, the petitioner was the worker of respondent No. 2, who had occasionally deputed the petitioner to do the work of perennial nature with the respondent No.1, hence, the respondent No.1 is nothing to do with the petitioner and even the contributions to the funds were being paid by respondent No.1 and all the statutory records were being maintained by respondent No.1 and that the control and supervision over the petitioner was of respondent No.1. It is further asserted that before the Labour-cum-Conciliation Officer, the dispute stand settled and as such the petitioner was not entitled to any relief as prayed by him. The respondent No.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent No. 2 contested the claim filed by the petitioner wherein preliminary objections have been raised qua concealment of material facts,

abandonment and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was the employee of respondent No. 2, who had a valid contract lincece under the Contract Labour Act and in terms of agreement executed between respondent No.1 and respondent No.2, the respondent No. 2 provided the contract labour for loading and unloading work to respondent No.1. It is further asserted that the payment of wages, contribution under ESI, EPF, maintenance of register was being done by respondent No. 2 and even the respondent No. 2 was exercising control and supervision over the workers deployed by it to respondent no.1 and that the petitioner being the employee of respondent No. 2, the present dispute was settled before the conciliation officer. The respondent No. 2 prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by respondents, the petitioner reiterated the averments made in the claim petition by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were framed on 3-10-2013.

(1) Whether the termination of the services of the petitioner verbally *w.e.f.* 5-11-2008 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether this petition against respondent No.1 is neither competent nor maintainable as alleged in preliminary objections No. 1 to 4? ..*OPR-1.*

(4) Whether this petition against respondent No. 2 is neither competent nor maintainable as the petitioner himself, on his own sweet will had abandoned the job on being settled the dispute as alleged? ..*OPR-2.*

(5) Whether the petitioner is gainfully employed as alleged? If so, its effect? ..*OPR-2.*

(6) Whether this petition is bad for misjoinder of parties as alleged? ..*OPRs.*

(7) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No.3 Yes.

Issue No.4 No.

Issue No.5 Yes

Issue No.6 Decided accordingly

Relief : Reference answered in favour of the petitioner and against respondent No 2.

REASONS FOR FINDINGS

Issues no.1, 3 and 6 :

9. Being interlinked and correlated all these issues are taken up together for discussion and decision.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination on behalf of respondent no.1 he expressed his ignorance that he was the employee of respondent No.2. He denied that his salary, ESI, EPF contribution was being deposited by contractor. He further denied that he was doing the work of loading and unloading. He also denied that vide mark P-2 he had entered into a settlement before the Labour Officer. He denied that he was not the employee of respondent No.1 company and his services were not terminated by it. When cross-examined on behalf of respondent No.2, he admitted that he was the contract labour with S.S. Engineering. He denied that his salary was being paid by S.S. Engineering who also used to mark his attendance and his ESI, EPF etc. was being deducted by contractor. He further denied that respondent No.2 used to supervise his work. He also denied that he had taken the full and final dues from respondent No. 2.

11. On the other hand the respondent no.1 examined one Shri Kashmir Singh Thakur (Head HR) as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence authority letter Ex. RW-1/B, registration certificate Ex. RW-1/C, licence mark RX, PF contribution slip mark RY, letter dated 19-9-2010 mark RZ, reply to demand notice dated 27-8-2009 mark RZ/1, contract issued to respondent No.2 mark RZ/2, conciliation proceedings dated 9-4-2009 mark RZ-3, copy of attendance register and payment of wages register of respondent No.2 mark RZ/4. In cross-examination on behalf of respondent No.2, he admitted that the petitioner being the employee of respondent No.2 was deployed with respondent No.1 for loading and unloading work. He further admitted that the respondent No.2 maintained register and other record of the petitioner and pay wages, maintain EPF and ESI record etc. He also admitted that the contribution towards ESI and EPF was contributed by respondent No.2. He admitted that the petitioner was a worker of respondent No.2 and that control and supervision of the petitioner was with the respondent No. 2. When cross-examined on behalf of petitioner he expressed his ignorance that the petitioner was drawing ₹ 3395/- P.M. He denied that the respondent No.2 was an agent of respondent No.1 company. He denied that the respondent No.1 tried to obtain the resignation from the petitioner before his termination. He further denied that on 1-11-2008 the petitioner was not allowed to enter inside the factory. He also denied that the petitioner was the employee of respondent no.1 and he was illegally terminated.

12. The respondent No. 2 examined two RWs. RW-2 Shri Ashok Kumar tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply filed by respondent No.2. He also tendered in evidence authority letter Ex. RW-2/B, the copy of licence of contract labour Ex. RW-2/C, the copy of contract for loading and unloading Ex. RW-2/D, the copy of wage register Ex. RW-2/E and the copy of attendance register Ex. RW-2/F. In cross-examination on behalf of respondent No.1 he admitted that he was the contractor with the company. He further admitted that the ESI, PF and all other records pertaining to the workers were being maintained by them. He also admitted that the workers engaged by respondent No.2 have no concern with the company (respondent No.1). When cross examined on behalf of petitioner he denied that the wage register was not maintained as per Contract Labour Act. He stated that the

supervisor of respondent No. 2 used to disburse the salary to the workmen in the factory of respondent No. 2. He further stated that the respondent No. 2 used to supply 40-45 workers per day to respondent No.1. He denied that the petitioner was the employee of respondent No. 1. He further denied that the services of the petitioner were terminated by respondent No.1. He also denied that the register was not properly maintained and is fabricated.

13. RW-3 Shri Surinder Kumar, Senior Assistant from the office of Labour Officer, Baddi had produced the summoned record *i.e.* the copy of conciliation proceedings dated 9-4-2009 Ex. RW-3/A, settlement Ex. RW-3/B, the conciliation proceedings dated 12-2-2008 and 13-3-2009 Ex.RW-3/C in cross-examination on behalf of petitioner he admitted that Ex. RW- 3/A to Ex. RW-3/C have not been written by him. He further admitted that there is no stamp of Labour Officer affixed on Ex. RW-3/A to Ex. RW-3/C.

14. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was working as a helper in the premises of respondent No.1 company and his services were terminated on 5-11-2008. It has also become clear that the respondent No.1 (Company) had a certificate of registration Ex. RW-1/C from the prescribed authority and the respondent No. 2 (contractor) had the licence Ex. RW-2/C issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of Contract Labour (Abolition and Regulation) Act. It has also become clear that vide agreement Ex. RW-2/D, the respondent No.1 company had entered into a contract with respondent No. 2 contractor for loading and unloading of material. **In (2009) 13 SCC titled as International Airport Authority of India** Vs. **International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court that the principle employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him and the workers being the employee of the contractor, the ultimate supervision and control lies with the contractor. The relevant portion of the aforesaid judgment is reproduced as under:

> "38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."
>
> 53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.
>
> 54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

15. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was the employee of respondent No.1 company. Rather in cross-examination he admitted that he was the contract labour with S.S Engineering *i.e.* respondent No. 2. He further admitted in cross-examination that he cannot produce any document to show that he was the employee of respondent No.1 company. No appointment letter has been produced by the petitioner in order to show that he was engaged by respondent no.1 company. On the other hand RW-1 admitted in cross-examination that there was a contract with respondent no.1 company and respondent No.2 contractor to deploy contract labour the copy of which is Ex. RW-2/D. He also stated in crossexamination that he was maintaining the record of ESI, PF and all other records pertaining to the workers. He further stated in cross-examination that the supervisor of the contractor used to assign the work to the contract labour and disburse the salary to the workers in the factory. He also stated that the respondent No. 2 (contractor) used to supply 40-45 workers per day to respondent No.1 company. RW-2 admitted in cross-examination that their supervisor used to disburse the salary to the workers. The perusal of the evidence on record further makes it clear that the respondent No.2 contractor was maintaining the wage register Ex. RW-2/E and attendance register Ex. RW-2/F of its workers including the petitioner. Thus in view of the aforesaid judgment of the Hon'ble Supreme Court and also in view of the entire evidence and material on record particularly the admission of the petitioner indicates that the petitioner was the worker of respondent No.2 contractor and he was under the complete control and supervision of respondent No. 2 as the respondent No. 2 used to assign the work and disburse the salary to the workers, maintain the entire record under the labour laws and make the contributions towards ESI and EPF of all workers including the petitioner. Hence, it can be safely held that the petitioner was not the employee of respondent no.1 company but he was the employee of respondent No.2 contractor. The relationship of employer and employee between the petitioner and respondent no.1 company has not been established. Hence, in view of the entire evidence as discussed above I have no hesitation in holding that the petitioner was engaged by the respondent No.2 contractor and was deployed in the premises of respondent No.1 company by the respondent No.2 and as such the claim petition is not maintainable against respondent no.1 and is bad for misjoinder of respondent No.1company.

16. Now, the next question which arises for consideration before this Court as to whether the services of the petitioner were illegally terminated by the respondent No. 2 contractor. It is not disputed that the petitioner was engaged by the respondent No. 2 in the month of September, 2006 and he continued as such till 31-10-2008 meaning thereby the petitioner had completed 240 days in each calendar year preceding his termination. It is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No. 2 contractor to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior**

to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

17. In the present case also as observed aforesaid, the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 5-11-2008 by the respondent No.2 without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Hence, all these issues are decided accordingly.

Issues No. 2 & 5 :

18. Being interlinked both these issues are taken up together for discussion and decision.

19. Since, I have held under issues No.1, 3 and 6 above that the termination of services of the petitioner by the respondent No.2 contractor without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back-wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back-wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C. Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Rather, he admitted in cross-examination that he had been doing agriculture work. In **(2007) 10 SCC 765, North East Karnatka Road Transport Corporation** Vs. **M. Nagangouda**, it has been held by the Hon'ble Supreme Court that gainful employment would also include self employment. The relevant portion of the aforesaid judgment is reproduced as under:

> "On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with

income from gainful employment in any establishment. In our view, "gainful employment" would also include self employment wherefrom income is generated. Income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".

(Emphasis supplies).

Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, coupled with the fact that the petitioner had been doing the agricultural work for livelihood, I have no hesitation in holding that the petitioner is not entitled to any back-wages. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No.2 is partly decided in favour of the petitioner and against the respondent No.2 contractor whereas issue No. 5 is decided against the petitioner and in favour of respondent No.2.

Issue No. 4

23. The learned counsel for the respondent No.2 contended that the petitioner had left the job at his own will as the dispute with respondent No.2 stood settled in the conciliation proceedings held before the Labour Officer and in this respect he has relied upon the conciliation proceedings Ex. RW-3/A and Ex. RW-3/C and settlement Ex. RW-3/B. However, the perusal of the aforesaid proceedings shows that there was a dispute between the petitioner and other workers with the respondent No.2 regarding the payment of one month's wages and overtime wages. However, the present dispute/reference is regarding the termination of the services of the petitioner. Therefore, from the proceedings Ex. RW-3/A and Ex. RW-3/C and settlement Ex. RW-3/B, it cannot be said that the present dispute regarding the termination of the services of the petitioner stood settled. The learned counsel for respondent No. 2 has failed to explain as to why the reference was sent to this Court by the appropriate government for adjudication if the dispute was settled. Morover there is no *iota* of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent No.2. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it has been held that:

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. *v.* Venkatiah (1964) 4 SCR 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

Hence, in view of the law laid down (*supra*), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own. Accordingly, this issue is decided in favour of the petitioner and against respondent No. 2.

Relief.

As a sequel to my above discussion and findings on issues No.1 to 6, the claim of the petitioner succeeds and is hereby partly allowed and the respondent No. 2 is directed to reinstate the petitioner in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent No. 2. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 8th Day of December, 2017.

(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla
At Camp Court Solan.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 61 of 2014
Instituted on 11-8-2014
Decided on 14-12-2017

Surender s/o Shri Kringu Ram, r/o Village Kharota, P.O. Mandhala, Tehsil Baddi, District Solan, HP. ..*Petitioner.*

VERSUS

3. M/s GMP Technical Solution through its Managing Director, Director, General Manager O/o M/s GMP Technical Solution, Village Kurawalan, P.O Mandhal, District Solan HP.

4. M/s S.S. Engineer through its Prop. Manager, Authorized person, O/o M/s SS Engineer Near Bus Stand Baddi, District Solan, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Atul Pandit, Advocate

For respondent No.1 : Shri Ravinder Ravi, Advocate vice Shri Rahul Mahajan, Advocate.

For respondents No. 2 & 3: Shri Kapil Thakur, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Shri Surender s/o Shri Kringu Ram R/o Village Kharota, P.O. Mandhala, Distt. Solan, H.P. by the (i) The General Manager,**

M/s GMP Technical Solution, Village-Kurawala, P.O. Mandhala, Distt. Solan (Principal Employer) (ii) M/s S.S. Engineers, Near Bus Stand, Baddi, Distt. Solan, H.P. (Contractor Company) verbally w.e.f. **05-11-2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers?**"

2. Briefly, the case of the petitioner is that on 7-8-2006, he was employed as helper by respondent no.1 through their agent *i.e.* respondent No. 2 and he continued as such till 31-10-2008 and his last drawing wages were ₹ 3395/- per month. It is further stated that the work and conduct of the petitioner was more than satisfactory and he was never asked to any explanation call, censure or show cause notice etc. That about three months before retrenchment from the service, the management was trying to make resignation from the petitioner but he always denied to do so and on 1-11-2008, when he came to the factory for duty, he was not allowed to enter the factory gate by the security guard and thereafter the petitioner tried to meet the management but of no avail and his services were terminated and thereafter on 5-11-2008, the petitioner raised an industrial dispute and during conciliation meeting some dues, wages and overtime wages were paid to the petitioner and without reaching any conclusion about the reinstatement the conciliation proceedings were ended. It is also stated that neither any notice nor compensation was paid to the petitioner. Against this back-drop a prayer has been made that he be reinstated in service with seniority and continuity along-with full back wages.

3. By filing separate reply, the respondent No.1 contested the claim filed by the petitioner wherein preliminary objections have been raised that the claim petition is neither competent nor maintainable, that there exists no employer-employee relationship between the petitioner and respondent No.1 and that the petitioner is gainfully employed. On merits, it has been asserted that in terms of agreement executed between respondent No.1 and respondent No.2, the petitioner was a workman of respondent No. 2 (contractor), who deputed the petitioner for loading and unloading work which is not of perennial nature with respondent no.1 and that the petitioner was a contractual labour and the respondent No.1 had a valid registration to employee contract labour under Contract Labour (Regulation and Abolition) Act, 1974 and HP Contract Labour (Regulation and Abolition Rules 1974 and respondent No.2 had a licence to provide the contract labour under the Contract Labour Act, hence, there exists no relationship of employeremployee between the petitioner and respondent No.1. Since, the petitioner was the worker of respondent No.2, who had occasionally deputed the petitioner to do the work of imperennial nature with the respondent No.1, hence, the respondent No.1 is nothing to do with the petitioner and even the contributions to the funds were being paid by respondent No.1 and all the statutory records were being maintained by respondent No.1 and that the control and supervision over the petitioner was of respondent no.1. It is further asserted that before the Labour-cum-Conciliation Officer, the dispute stand settled and as such the petitioner was not entitled to any relief as prayed by him. The respondent no.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent No.2 contested the claim filed by the petitioner wherein preliminary objections have been raised qua concealment of material facts, abandonment and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was the employee of respondent No. 2, who had a valid contract lincece under the Contract Labour Act and in terms of agreement executed between respondent no.1 and respondent No. 2, the respondent No.2 provided the contract labour for loading and unloading work to respondent No.1. It is further asserted that the payment of wages, contribution under ESI, EPF, maintenance of register was being done by respondent No. 2 and even the respondent No. 2 was exercising control and supervision over the workers deployed by it to respondent No.1 and that the petitioner being the employee of respondent No. 2, the present dispute was settled before the conciliation officer. The respondent No.2 prayed for the dismissal of the claim petition.

5. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were framed on 9-9-2016.

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 5-11-2008 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether this petition is not maintainable as alleged? ..*OPRs.*

(4) Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No. 3 No

Relief : Reference answered in favour of the petitioner and against respondent No. 2.

REASONS FOR FINDINGS

Issue no. 1 :

8. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination on behalf of respondent No.1 he admitted that he was deployed by respondent No.2 in the factory of respondent No. 1. He further admitted that he is the employee of respondent No.2. He denied that his salary, ESI, EPF contribution was being deducted by respondent No.2. He further denied that the salary was being paid to him by respondent No. 2 and his attendance was being marked by the contractor. When cross-examined on behalf of respondent No.2, he admitted that he was deployed along-with other workers in the factory of respondent No.1. He denied that his attendance was being marked by the contractor and that the salary was being paid to him by the contractor. He further denied that he was doing the work of loading and unloading.

9. On the other hand the respondent No.1 examined one Shri Surinder Kumar, Senior Assistant from the office of Labour Officer, Baddi who had produced the summoned record *i.e.* the copy of conciliation proceedings dated 9-4-2009, 12-2-2009 and 12-3-2009 Ex. RW-1/A to Ex. RW-1/C. In cross-examination on behalf of petitioner he admitted that Ex. RW-3/A to Ex. RW-3/C have not been written by him. He further admitted that there is no stamp of Labour Officer affixed on Ex. RW-3/A to Ex. RW-3/C.

10. RW-2 Shri Kashmir Singh Thakur (Head HR) tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply filed by respondent

No.1. He also tendered in evidence authority letter Ex. RW-2/B, registration certificate mark R-1, letter dated 19-9-2010 mark R-2, copy of PF slip mark R-3 and the reply filed by the respondent No.1 to demand notice mark R-4. In cross-examination on behalf of respondent No. 2, he admitted that the petitioner being the employee of respondent No.2 was deployed with respondent no.1 for loading and unloading work. He further admitted that the respondent No. 2 maintained register and other record of the petitioner and pay wages, maintain EPF and ESI record etc. He also admitted that the contribution towards ESI and EPF was contributed by respondent No. 2. He admitted that the petitioner was a worker of respondent No. 2 and that control and supervision of the petitioner was with the respondent No. 2. When crossexamined on behalf of petitioner he expressed his ignorance that the petitioner was drawing ₹ 3395/- P.M. He denied that the respondent No. 2 was an agent of respondent No.1 company. He denied that the respondent No.1 tried to obtain the resignation from the petitioner before his termination. He further denied that on 1-11-2008 the petitioner was not allowed to enter inside the factory. He also denied that the petitioner was the employee of respondent no.1 and he was illegally terminated.

11. The respondent No.2 examined one Shri Ashok Kumar as RW-3 who tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply filed by respondent No. 2. He also tendered in evidence authority letter Ex. RW3/ B, the copy of licence of contract labour Ex. RW-3/C, the copy of contract for loading and unloading Ex. RW-3/D, the copy of attendance register Ex. RW-3/E, the copy of wage register Ex. RW-3/F and the copy of adult worker register Ex. RW-3/G. In cross-examination on behalf of respondent No.1 he admitted that he was the contractor with the company. He further admitted that the ESI, PF and all other records pertaining to the workers were being maintained by them. He also admitted that the workers engaged by respondent No.2 have no concern with the company (respondent No.1). When cross-examined on behalf of petitioner he denied that the wage register was not maintained as per Contract Labour Act. He stated that the supervisor of respondent No. 2 used to disburse the salary to the workmen in the factory of respondent No.1. He further stated that the respondent No. 2 used to supply 40-45 workers per day to respondent No.1. He denied that the petitioner was the employee of respondent No.1. He further denied that the services of the petitioner were terminated by respondent no.1. He also denied that the register was not properly maintained and is fabricated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was working as a helper in the premises of respondent No.1 company and his services were terminated on 5.11.2008. It has also become clear that the respondent no.1 (Company) had a certificate of registration mark R-1 from the prescribed authority and the respondent No.2 (contractor) had the licence Ex. RW-3/C issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of Contract Labour (Abolition and Regulation) Act. It has also become clear that vide contract/agreement Ex. RW-3/D, the respondent No.1 company had entered into a contract with respondent No. 2 contractor for loading and unloading of material. **In (2009) 13 SCC titled as International Airport Authority of India** Vs. **International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court that the principle employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him and the workers being the employee of the contractor, the ultimate supervision and control lies with the contractor. The relevant portion of the aforesaid judgment is reproduced as under:

> "38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the

right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

13. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was the employee of respondent No. 1 company. Rather in cross-examination he admitted that he was the employee of respondent No. 2. He further admitted in cross-examination that he cannot produce any document to show that he was the employee of respondent No.1 company. No appointment letter has been produced by the petitioner in order to show that he was engaged by respondent no.1 company. On the other hand RW-3 admitted in cross-examination that there was a contract with respondent No.1 company and respondent No.2 contractor to deploy contract labour the copy of which is Ex. RW-3/D. He also stated in cross-examination that he was maintaining the record of ESI, PF and all other records pertaining to the workers. He further stated in cross-examination that the supervisor of the contractor used to assign the work to the contract labour and disburse the salary to the workers in the factory. He also stated that the respondent No. 2 (contractor) used to supply 40-45 workers per day to respondent No.1 company. RW-2 admitted in cross-examination that their supervisor used to disburse the salary to the workers. The perusal of the evidence on record further makes it clear that the respondent No.2 contractor was maintaining the wage register Ex. RW-3/E and attendance register Ex. RW-3/F of its workers including the petitioner. Thus in view of the aforesaid judgment of the Hon'ble Supreme Court and also in view of the entire evidence and material on record particularly the admission of the petitioner indicates that the petitioner was the worker of respondent No. 2 contractor and he was under the complete control and supervision of respondent No. 2 as the respondent No.2 used to assign the work and disburse the salary to the workers, maintain the entire record under the labour laws and make the contributions towards ESI and EPF of all workers including the petitioner. Hence, it can be safely held that the petitioner was not the employee of respondent No.1 company but he was the employee of respondent No.2 contractor. The relationship of employer and employee between the petitioner and respondent No.1 company has not been established. Hence, in view of the entire evidence as discussed above I have no hesitation in holding that the petitioner was engaged by the respondent No.2 contractor and was deployed in the premises of respondent no.1 company by the respondent No.2.

14. The learned counsel for the respondent No. 2 contended that the petitioner had left the job at his own will as the dispute with respondent No. 2 stood settled in the conciliation

proceedings Ex. RW-1/A to Ex. RW-1/C held before the Labour Officer. However, the perusal of the aforesaid proceedings shows that there was a dispute between the petitioner and other workers with the respondent No.2 regarding the payment of one month's wages and overtime wages. However, the present dispute/reference is regarding the termination of the services of the petitioner. Therefore, from the proceedings Ex. RW-1/A to Ex. RW-1/C, it cannot be said that the present dispute regarding the termination of the services of the petitioner stood settled. The learned counsel for respondent No. 2 has failed to explain as to why the reference was sent to this Court by the appropriate government for adjudication if the dispute was settled. Moreover there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent No.2. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others** Vs. **Chemicals and Fibers India Ltd.** where it has been held that:

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co.** *vs.* **Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Hence, in view of the law laid down (supra), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

15. Now, the next question which arises for consideration before this Court as to whether the services of the petitioner were illegally terminated by the respondent No. 2 contractor. It is not disputed that the petitioner was engaged by the respondent No. 2 on 7-8-2006 and he continued as such till 31-10-2008 meaning thereby the petitioner had completed 240 days in each calendar year preceding his termination. It is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No. 2 contractor to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that**

notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

16. In the present case also as observed aforesaid, the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 5-11-2008 by the respondent No. 2 without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Hence, all these issues are decided accordingly.

Issues No. 2 :

17. Since, I have held under issue no.1, above that the termination of services of the petitioner by the respondent no.2 contractor without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** *Vs.* **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

19. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** *Vs.* **S.C. Sharma** that :

"16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

20. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Rather, he admitted in cross-examination that he had been doing agriculture work. In **(2007) 10 SCC 765, North East Karnatka Road Transport Corporation** *Vs.* **M. Nagangouda**, it has been held by the Hon'ble Supreme Court that gainful employment would also include self employment. The relevant portion of the aforesaid judgment is reproduced as under:

"On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with

income from gainful employment in any establishment. In our view, "gainful employment" would also include self employment wherefrom income is generated. Income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same. *Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".*

(*Emphasis supplies).*

Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, coupled with the fact that the petitioner had been doing the agricultural work for livelihood, I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent No. 2 contractor.

Issue No. 3 :

21. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the respondent No. 2 is directed to reinstate the petitioner in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent No.2. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 14th Day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court,*
Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 63 of 2014
Instituted on 11-8-2014
Decided on 14-12-2017

Lal Chand s/o Shri Prem Chand r/o Village Gurdaspur, Tehsil Baddi, District Solan, HP.
…Petitioner.

VERSUS

5. M/s GMP Technical Solution through its Managing Director, Director, General Manager o/o M/s GMP Technical Solution, Village Kurawalan, P.O Mandhal, District Solan HP.

6. M/s S.S. Engineer through its Prop. Manager, Authorized person, o/o M/s S.S. Engineer Near Bus Stand Baddi, District Solan, HP. …*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Atul Pandit, Advocate.

For respondent No.1 : Shri Rahul Mahajan, Advocate.

For respondents No. 2 & 3 : Shri Kapil Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Shri Lal Chand s/o Shri Prem Chand R/o Village Gurdaspur, Tehsil Baddi, Distt. Solan, H.P. by the (i) The General Manager, M/s GMP Technical Solution, Village-Kurawala, P.O. Mandhala, Distt. Solan (Principal Employer) (ii) M/s S.S. Engineers, Near Bus Stand, Baddi, Distt. Solan, H.P. (Contractor Company) verbally w.e.f. 05.11.2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers?**"

2. Briefly, the case of the petitioner is that on 20-7-2006, he was employed as helper by respondent No.1 through their agent *i.e.* respondent No. 2 and he continued as such till 31-10-2008 and his last drawing wages were ₹ 3395/- per month. It is further stated that the work and conduct of the petitioner was more than satisfactory and he was never asked to any explanation call, censure or show cause notice etc. That about three months before retrenchment from the service, the management was trying to take resignation from the petitioner but he always denied to do so and on 1-11-2008, when he came to the factory for duty, he was not allowed to enter the factory gate by the security guard and thereafter the petitioner tried to meet the management but of no avail and his services were terminated and thereafter on 5-11-2008, the petitioner raised an industrial dispute and during conciliation meeting some dues, wages and overtime wages were paid to the petitioner and without reaching any conclusion about the reinstatement the conciliation proceedings were ended. It is also stated that neither any notice nor compensation was paid to the petitioner. Against this back-drop a prayer has been made that he be reinstated in service with seniority and continuity alongwith full back wages 3. By filing separate reply, the respondent No.1 contested the claim filed by the petitioner wherein preliminary objections have been raised that the claim petition is neither competent nor maintainable, that there exists no employer-employee relationship between the petitioner and respondent No.1 and that the petitioner is gainfully employed. On merits, it has been asserted that in terms of agreement executed between respondent no.1 and respondent No. 2, the petitioner was a workman of respondent No.2 (contractor), who deputed the petitioner for loading and unloading work which is not of perennial nature with respondent no.1 and that the petitioner was a contractual labour and the respondent No.1 had a valid registration to employee contract labour under Contract Labour (Regulation and Abolition) Act, 1974 and HP Contract Labour (Regulation and Abolition Rules 1974 and respondent No.2 had a licence to provide the contract labour under the Contract Labour Act, hence, there exists no relationship of employeremployee

between the petitioner and respondent No.1. Since, the petitioner was the worker of respondent No. 2, who had occasionally deputed the petitioner to do the work of perennial nature with the respondent No.1, hence, the respondent No.1 is nothing to do with the petitioner and even the contributions to the funds were being paid by respondent No.1 and all the statutory records were being maintained by respondent No.1 and that the control and supervision over the petitioner was of respondent No. 1. It is further asserted that before the Labour-cum-Conciliation Officer, the dispute stands settled and as such the petitioner was not entitled to any relief as prayed by him. The respondent no.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent No.2 contested the claim filed by the petitioner wherein preliminary objections have been raised qua concealment of material facts, abandonment and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was the employee of respondent No. 2, who had a valid contract license under the Contract Labour Act and in terms of agreement executed between respondent No.1 and respondent No.2, the respondent No. 2 provided the contract labour for loading and unloading work to respondent No.1. It is further asserted that the payment of wages, contribution under ESI, EPF, maintenance of register was being done by respondent No. 2 and even the respondent No. 2 was exercising control and supervision over the workers deployed by it to respondent No. 1 and that the petitioner being the employee of respondent No. 2, the present dispute was settled before the conciliation officer. The respondent No.2 prayed for the dismissal of the claim petition.

5. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were framed on 9-9-2016.

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 5-11-2008 is illegal and unjustified as alleged? …*OPP.*

(2) If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*

(3). Whether this petition is not maintainable as alleged? ...*OPRs.*

(4) Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement with seniority and continuity but without back-wages

Issue No.3 Decided accordingly.

Relief. : Reference answered in favour of the petitioner and against respondent No.2

REASONS FOR FINDINGS

Issue No. 1:

8. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW/1A wherein he reiterated almost all the averments as made in the

claim petition. In cross-examination on behalf of respondent No.1 he admitted that no appointment letter was issued to him by respondent No.1 company. He denied that he was the employee of respondent No. 2. He further denied that his salary was being paid to him by respondent No. 2 contractor. He also denied that his, ESI, EPF contribution was being deducted by respondent No. 2 contractor. He denied that his attendance was being marked by the respondent No. 2. When cross-examined on behalf of respondent No. 2, he denied that he was deployed along-with other workers in the factory of respondent no.1 by respondent No. 2. He further denied that he was doing the working of loading and unloading the material. He also denied that he left the job at his own and that he was not the employee of respondent No.1.

9. On the other hand RW-1 Shri Surinder Kumar, Senior Assistant from the office of Labour Officer, Baddi had produced the summoned record *i.e.* the copy of conciliation proceedings dated 9-4-2009, 12-2-2009 and 10-3-2009 Ex. RW-1/A to Ex. RW-1/C. In crossexamination on behalf of petitioner he admitted that Ex. RW-3/A to Ex. RW-3/C have not been written by him. He further admitted that there is no stamp of Labour Officer affixed on Ex. RW-3/A to Ex. RW-3/C.

10. RW-2 Shri Kashmir Singh Thakur (Head HR) tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply filed by respondent No. 1. He also tendered in evidence authority letter Ex. RW-2/B, registration certificate mark R-1, letter dated 19-9-2010 mark R-2, copy of PF slip mark R-3 and the reply filed by the respondent No. 1 to demand notice mark R-4. In cross-examination on behalf of respondent No. 2, he admitted that the petitioner being the employee of respondent No.2 was deployed with respondent No.1 for loading and unloading work. He further admitted that the respondent No. 2 maintained register and other record of the petitioner and pay wages, maintain EPF and ESI record etc. He also admitted that the contribution towards ESI and EPF was contributed by respondent No. 2. He admitted that the petitioner was a worker of respondent No. 2 and that control and supervision of the petitioner was with the respondent No. 2. When crossexamined on behalf of petitioner he expressed his ignorance that the petitioner was drawing ₹ 3395/- P.M. He denied that the respondent No. 2 was an agent of respondent No.1 company. He denied that the respondent No.1 tried to obtain the resignation from the petitioner before his termination. He further denied that on 1-11-2008 the petitioner was not allowed to enter inside the factory. He also denied that the petitioner was the employee of respondent No.1 and he was illegally terminated.

11. The respondent No.2 examined one Shri Ashok Kumar as RW-3 who tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply filed by respondent No.2. He also tendered in evidence authority letter Ex. RW-3/B, the copy of licence of contract labour Ex. RW-3/C, the copy of contract for loading and unloading Ex. RW-3/D, the copy of attendance register Ex. RW-3/E, the copy of wage register Ex. RW-3/F and the copy of adult worker register Ex. RW-3/G. In cross-examination on behalf of respondent No.1 he admitted that he was the contractor with the company. He further admitted that the ESI, PF and all other records pertaining to the workers were being maintained by them. He also admitted that the workers engaged by respondent No.2 have no concern with the company (respondent No.1). When cross-examined on behalf of petitioner he denied that the wage register was not maintained as per Contract Labour Act. He stated that the supervisor of respondent No.2 used to disburse the salary to the workmen in the factory of respondent No.1. He further stated that the respondent No.2 used to supply 40-45 workers per day to respondent No.1. He denied that the petitioner was the employee of respondent No.1. He further denied that the services of the petitioner were terminated by respondent No.1. He also denied that the register was not properly maintained and is fabricated.

12. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was working as a helper in the premises of respondent No.1 company and his services were terminated on 5-11-2008. It has also become clear

that the respondent No.1 (Company) had a certificate of registration mark R-1 from the prescribed authority and the respondent No. 2 (contractor) had the licence Ex. RW-3/C issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of Contract Labour (Abolition and Regulation) Act. It has also become clear that *vide* contract/agreement Ex. RW-3/D, the respondent No.1 company had entered into a contract with respondent No.2 contractor for loading and unloading of material. **In (2009) 13 SCC titled as International Airport Authority of India** Vs. **International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court that the principle employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him and the workers being the employee of the contractor, the ultimate supervision and control lies with the contractor. The relevant portion of the aforesaid judgment is reproduced as under:

> "38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."
>
> 53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.
>
> 54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

13. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was the employee of respondent No.1. Rather in cross-examination, he admitted that no appointment letter was issued by respondent No.1. He further admitted that he cannot produce any document to show that the salary was being paid to him by respondent No.1 company. No document has been produced by the petitioner to show that he was engaged by respondent No.1 company. On the other hand RW-3 admitted in cross-examination that there was a contract with respondent No.1 company and respondent No.2 contractor to deploy contract labour the copy of which is Ex. RW-3/D. He also stated in cross-examination that he was maintaining the record of ESI, PF and all other records pertaining to the workers. He further stated in cross-examination that the supervisor of the contractor used to assign the work to the contract labour and disburse the salary to the workers in the factory. He also stated that the respondent No. 2 (contractor) used to supply 40-45 workers per day to respondent No.1 company. RW-3 admitted in cross-examination that their supervisor used to

disburse the salary to the workers. The perusal of the evidence on record further makes it clear that the respondent No. 2 contractor was maintaining the wage register Ex. RW-3/E, attendance register Ex. RW-3/F and adult worker register Ex RW3/G of its workers including the petitioner. Thus in view of the aforesaid judgment of the Hon'ble Supreme Court and also in view of the entire evidence and material on record it can safely be held that the petitioner was the worker of respondent No.2 contractor and he was under the complete control and supervision of respondent No.2 as the respondent No.2 used to assign the work and disburse the salary to the workers, maintain the entire record under the labour laws and make the contributions towards ESI and EPF of all workers including the petitioner. Hence, it can be safely held that the petitioner was not the employee of respondent no.1 company but he was the employee of respondent no.2 contractor. The relationship of employer and employee between the petitioner and respondent no.1 company has not been established. Hence, in view of the entire evidence as discussed above I have no hesitation in holding that the petitioner was engaged by the respondent No.2 contractor and was deployed in the premises of respondent No.1 company by the respondent No.2.

14. The learned counsel for the respondent No. 2 contended that the petitioner had left the job at his own will as the dispute with respondent No. 2 stood settled in the conciliation proceedings Ex. RW-1/A to Ex. RW-1/C held before the Labour Officer. However, the perusal of the aforesaid proceedings shows that there was a dispute between the petitioner and other workers with the respondent No.2 regarding the payment of one month's wages and overtime wages. However, the present dispute/reference is regarding the termination of the services of the petitioner. Therefore, from the proceedings Ex. RW-1/A to Ex. RW-1/C, it cannot be said that the present dispute regarding the termination of the services of the petitioner stood settled. The learned counsel for respondent No. 2 has failed to explain as to why the reference was sent to this Court by the appropriate government for adjudication if the dispute was settled. Moreover there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent No. 2. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others** *Vs.* **Chemicals and Fibers India Ltd.** where it has been held that:

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co.** *v.* **Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Hence, in view of the law laid down *(supra*), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

15. Now, the next question which arises for consideration before this Court as to whether the services of the petitioner were illegally terminated by the respondent No. 2 contractor. It is not disputed that the petitioner was engaged by the respondent No. 2 on 20-7-2006 and he continued as such till 31-10-2008 meaning thereby the petitioner had completed 240 days in each calendar year

preceding his termination. It is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No. 2 contractor to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** *Vs.* **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

16. In the present case also as observed aforesaid, the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 5-11-2008 by the respondent no.2 without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Hence, all these issues are decided accordingly.

Issues no. 2 :

17. Since, I have held under issue No.1, above that the termination of services of the petitioner by the respondent No. 2 contractor without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** *Vs.* **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

19. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex**

Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another *Vs.* **S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..."

20. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Rather, he admitted in cross-examination that he had been doing agriculture work. In **(2007) 10 SCC 765, North East Karnatka Road Transport Corporation** *Vs.* **M. Nagangouda**, it has been held by the Hon'ble Supreme Court that gainful employment would also include self employment. The relevant portion of the aforesaid judgment is reproduced as under:

> "On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self employment wherefrom income is generated. Income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same. **Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".**
>
> (*Emphasis supplies*).

Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, coupled with the fact that the petitioner had been doing the agricultural work for livelihood, I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent No. 2 contractor.

Issue No. 3 :

21. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable against respondent No.1. However, the claim petition is not maintainable against respondent No.2 as no relationship of employer and employee has been established between the petitioner and respondent No.1 company. Hence, this issue is decided accordingly.

RELIEF

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the respondent No.2 is directed to reinstate the petitioner in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent No. 2. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 14th Day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 62 of 2014
Instituted on 11-8-2014
Decided on 14-12-2017

Raj Kumar s/o Shri Chattar Singh r/o Village Gurdaspur, Tehsil Baddi, District Solan, H.P.
...Petitioner.

VERSUS

7. M/s GMP Technical Solution through its Managing Director, Director, General Manager o/o M/s GMP Technical Solution, Village Kurawalan, P.O Mandhal, District Solan, H.P.

8. M/s S.S. Engineer through its Prop. Manager, Authorized person, o/o M/s S.S. Engineer Near Bus Stand Baddi, District Solan, H.P. *...Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Atul Pandit, Advocate

For respondent No.1 : Shri Rahul Mahajan, Advocate

For respondents No. 2 & 3 : Shri Kapil Thakur, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Shri Raj Kumar s/o Shri Chattar Singh r/o Village Gurdaspur, Tehsil Baddi**, **Distt. Solan, H.P. by the (i) The General Manager, M/s GMP Technical Solution, Village-Kurawala, P.O. Mandhala, Distt. Solan (Principal Employer) (ii) M/s S.S. Engineers, Near Bus Stand, Baddi, Distt. Solan, H.P. (Contractor Company) verbally *w.e.f.* 05-11-2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers?**"

2. Briefly, the case of the petitioner is that in the month of June 2006, he was employed as helper by respondent No. 1 through their agent *i.e.* respondent No. 2 and he continued as such till

31-10-2008 and his last drawing wages were ₹ 3395/- per month. It is further stated that the work and conduct of the petitioner was more than satisfactory and he was never asked to any explanation call, censure or show cause notice etc. That about three months before retrenchment from the service, the management was trying to take resignation from the petitioner but he always denied to do so and on 1-11-2008, when he came to the factory for duty, he was not allowed to enter the factory gate by the security guard and thereafter the petitioner tried to meet the management but of no avail and his services were terminated and thereafter on 5-11-2008, the petitioner raised an industrial dispute and during conciliation meeting some dues, wages and overtime wages were paid to the petitioner and without reaching any conclusion about the reinstatement the conciliation proceedings were ended. It is also stated that neither any notice nor compensation was paid to the petitioner. Against this back-drop a prayer has been made that he be reinstated in service with seniority and continuity along-with full back wages.

3. By filing separate reply, the respondent No.1 contested the claim filed by the petitioner wherein preliminary objections have been raised that the claim petition is neither competent nor maintainable, that there exists no employer-employee relationship between the petitioner and respondent no.1 and that the petitioner is gainfully employed. On merits, it has been asserted that in terms of agreement executed between respondent No.1 and respondent No. 2, the petitioner was a workman of respondent No. 2 (contractor), who deputed the petitioner for loading and unloading work which is not of perennial nature with respondent No.1 and that the petitioner was a contractual labour and the respondent No.1 had a valid registration to employee contract labour under Contract Labour (Regulation and Abolition) Act, 1974 and HP Contract Labour (Regulation and Abolition Rules, 1974 and respondent No. 2 had a licence to provide the contract labour under the Contract Labour Act, hence, there exists no relationship of employer employee between the petitioner and respondent No. 1. Since, the petitioner was the worker of respondent No. 2, who had occasionally deputed the petitioner to do the work of perennial nature with the respondent No.1, hence, the respondent No. 1 is nothing to do with the petitioner and even the contributions to the funds were being paid by respondent No.1 and all the statutory records were being maintained by respondent No.1 and that the control and supervision over the petitioner was of respondent No.1. It is further asserted that before the Labour-cum-Conciliation Officer, the dispute stands settled and as such the petitioner was not entitled to any relief as prayed by him. The respondent No.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent No.2 contested the claim filed by the petitioner wherein preliminary objections have been raised *qua* concealment of material facts, abandonment and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was the employee of respondent No. 2, who had a valid contract license under the Contract Labour Act and in terms of agreement executed between respondent No.1 and respondent No. 2, the respondent No. 2 provided the contract labour for loading and unloading work to respondent No. 1. It is further asserted that the payment of wages, contribution under ESI, EPF, maintenance of register was being done by respondent No. 2 and even the respondent No. 2 was exercising control and supervision over the workers deployed by it to respondent No.1 and that the petitioner being the employee of respondent No. 2, the present dispute was settled before the conciliation officer. The respondent No.2 prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were framed on 9-9-2016.

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 5.11.2008 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether this petition is not maintainable as alleged? ..*OPRs.*

(4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No. 3 Decided accordingly.

Relief : Reference answered in favour of the petitioner and against respondent No. 2.

REASONS FOR FINDINGS

Issue No. 1

9. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW/1A wherein he reiterated almost all the averments as made in the claim petition. In cross-examination on behalf of respondent no.1 he admitted that no appointment letter was issued to him by respondent No.1. He denied that he was the employee of respondent No.2 and that he was deployed by respondent No.2 as contract labour with respondent no.1. He further denied that his salary was being paid by respondent No.2. He also denied that his attendance was being marked on the attendance register maintained by respondent No.2 and that his EPF contribution was paid by respondent No.2. He denied that he was under the control and supervision of respondent No.2. When cross-examined on behalf of respondent No.2, he admitted his signatures on EPF withdrawal statement mark RX-3. He denied that as per mark RX-3 respondent No. 2 was his employer. He further denied that he had left the job at his own.

10. On the other hand RW-1 Shri Surinder Kumar, Senior Assistant from the office of Labour Officer, Baddi who had produced the summoned record *i.e.* the copy of conciliation proceedings dated 9-4-2009, 12-2-2009 and 10-3-2009 Ex. RW-1/A to Ex. RW-1/C. In cross-examination on behalf of petitioner he admitted that Ex. RW-3/A to Ex. RW-3/C have not been written by him. He further admitted that there is no stamp of Labour Officer affixed on Ex. RW-3/A to Ex. RW-3/C.

11. RW-2 Shri Kashmir Singh Thakur (Head HR) tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence authority letter Ex. RW-2/B, registration certificate mark R-1, letter dated 19-9-2010 mark R-2 and the reply filed by the respondent no.1 to demand notice mark R-3. In cross-examination on behalf of respondent No. 2, he admitted that the petitioner being the employee of respondent No. 2 was deployed with respondent No.1 for loading and unloading work. He further admitted that the respondent No. 2 maintained register and other record of the petitioner and pay wages, maintain EPF and ESI record etc. He also admitted that the contribution towards ESI and EPF was contributed by respondent No. 2. He admitted that the petitioner was a worker of respondent No.2 and that control and supervision of the petitioner was with the respondent No. 2.

When cross-examined on behalf of petitioner he expressed his ignorance that the petitioner was drawing ₹ 3395/- P.M. He denied that the respondent No. 2 was an agent of respondent No.1 company. He denied that the respondent No.1 tried to obtain the resignation from the petitioner before his termination. He further denied that on 1-11-2008 the petitioner was not allowed to enter inside the factory. He also denied that the petitioner was the employee of respondent No. 1 and he was illegally terminated.

12. The respondent No. 2 examined one Shri Ashok Kumar as RW-3 who tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply filed by respondent No. 2. He also tendered in evidence authority letter Ex. RW-3/B, the copy of licence of contract labour Ex. RW-3/C, the copy of contract for loading and unloading Ex. RW-3/D, the copy of attendance register Ex. RW-3/E, the copy of wage register Ex. RW-3/F and the copy of adult worker register Ex. RW-3/G. In cross-examination on behalf of respondent no.1 he admitted that he was the contractor with the company. He further admitted that the ESI, PF and all other records pertaining to the workers were being maintained by them. He also admitted that the workers engaged by respondent No.2 have no concern with the company (respondent No.1). When cross-examined on behalf of petitioner he denied that the wage register was not maintained as per Contract Labour Act. He stated that the supervisor of respondent No.2 used to disburse the salary to the workmen in the factory of respondent No.1. He further stated that the respondent No.2 used to supply 40-45 workers per day to respondent no.1. He denied that the petitioner was the employee of respondent No.1. He further denied that the services of the petitioner were terminated by respondent No.1. He also denied that the register was not properly maintained and is fabricated.

13. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was working as a helper in the premises of respondent No.1 company and his services were terminated on 5-11-2008. It has also become clear that the respondent No.1 (Company) had a certificate of registration mark R-1 from the prescribed authority and the respondent No.2 (contractor) had the licence Ex. RW-3/C issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of Contract Labour (Abolition and Regulation) Act. It has also become clear that *vide* contract/agreement Ex. RW-3/D, the respondent No.1 company had entered into a contract with respondent No. 2 contractor for loading and unloading of material. **In (2009) 13 SCC titled as International Airport Authority of India** Vs. **International Air Cargo Workers Union and Anr**., it has been held by the Hon"ble Apex Court that the principle employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him and the workers being the employee of the contractor, the ultimate supervision and control lies with the contractor. The relevant portion of the aforesaid judgment is reproduced as under:

> "38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee

will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

14. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was the employee of respondent No.1 company. Rather in cross-examination he admitted that no appointment letter was issued by respondent No.1. He further admitted in cross-examination that he cannot produce any document to show that the salary was being paid to him by respondent No.1 company. No document has been produced by the petitioner to show that he was engaged by respondent no.1 company. On the other hand RW-3 admitted in cross-examination that there was a contract with respondent No.1 company and respondent No. 2 contractor to deploy contract labour the copy of which is Ex. RW-3/D. He also stated in cross-examination that he was maintaining the record of ESI, PF and all other records pertaining to the workers. He further stated in cross-examination that the supervisor of the contractor used to assign the work to the contract labour and disburse the salary to the workers in the factory. He also stated that the respondent No.2 (contractor) used to supply 40-45 workers per day to respondent No.1 company. RW-3 admitted in cross-examination that their supervisor used to disburse the salary to the workers. The perusal of the evidence on record further makes it clear that the respondent No.2 contractor was maintaining the wage register Ex. RW-3/E, attendance register Ex. RW-3/F and adult worker register Ex RW3/G of its workers including the petitioner.

Thus in view of the aforesaid judgment of the Hon'ble Supreme Court and also in view of the entire evidence and material on record it can safely be held that the petitioner was the worker of respondent No. 2 contractor and he was under the complete control and supervision of respondent No. 2 as the respondent No. 2 used to assign the work and disburse the salary to the workers, maintain the entire record under the labour laws and make the contributions towards ESI and EPF of all workers including the petitioner. Hence, it can be safely held that the petitioner was not the employee of respondent no.1 company but he was the employee of respondent No. 2 contractor. The relationship of employer and employee between the petitioner and respondent No.1 company has not been established. Hence, in view of the entire evidence as discussed above I have no hesitation in holding that the petitioner was engaged by the respondent No. 2 contractor and was deployed in the premises of respondent No.1 company by the respondent No. 2.

15. The learned counsel for the respondent No.2 contended that the petitioner had left the job at his own will as the dispute with respondent No. 2 stood settled in the conciliation proceedings Ex. RW-1/A to Ex. RW-1/C held before the Labour Officer. However, the perusal of the aforesaid proceedings shows that there was a dispute between the petitioner and other workers with the respondent No. 2 regarding the payment of one month's wages and overtime wages. However, the present dispute/reference is regarding the termination of the services of the petitioner. Therefore, from the proceedings Ex. RW-1/A to Ex. RW-1/C, it cannot be said that the present dispute regarding the termination of the services of the petitioner stood settled. The learned counsel for respondent No. 2 has failed to explain as to why the reference was sent to this Court by the

appropriate government for adjudication if the dispute was settled. Moreover there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent No.2. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others** *Vs.* **Chemicals and Fibers India Ltd.** where it has been held that:

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co.** *vs.* **Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Hence, in view of the law laid down (*supra*), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

16. Now, the next question which arises for consideration before this Court as to whether the services of the petitioner were illegally terminated by the respondent No.2 contractor. It is not disputed that the petitioner was engaged by the respondent No.2 in the month of June, 2006 and he continued as such till 31-10-2008 meaning thereby the petitioner had completed 240 days in each calendar year preceding his termination. It is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No.2 contractor to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

17. In the present case also as observed aforesaid, the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act before terminating the services of the

petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 5-11-2008 by the respondent no.2 without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Hence, all these issues are decided accordingly.

Issues No. 2

18. Since, I have held under issue No.1, above that the termination of services of the petitioner by the respondent No.2 contractor without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

19. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** *Vs.* **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

20. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** *Vs.* **S.C. Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

21. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, I have no hesitation in holding that the petitioner is not entitled to any backwages.

Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent No. 2 contractor.

Issue No. 3

22. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable against respondent No.2. However, the claim petition is not maintainable against respondent No.1 as no relationship of employer and employee has been established between the petitioner and respondent No.1 company. Hence, this issue is decided accordingly.

RELIEF

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the respondent No.2 is directed to reinstate the petitioner in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent No.2. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 14th Day of December, 2017.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref. No. 37 of 2011
Instituted on 13-9-2011
Decided on 8-12-2017

Rafic s/o Shri Ram Nath r/o VPO Mandhala, Tehsil Baddi, District Solan, H.P.
..Petitioner.

VERSUS

9. M/s GMP Technical Solution through its Managing Director, Director, General Manager O/o M/s GMP Technical Solution, Village Kurawalan, P.O Mandhal, District Solan, H.P.

10. M/s S.S Engineer through its Prop. Manager, Authorized person, O/o M/s SS Engineer Near Bus Stand Baddi, District Solan, H.P. *..Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Atul Pandit, Advocate

For respondent No.1 : Shri Ravinder Ravi, Advocate vice Shri Rahul Mahajan, Advocate.

For respondents No. 2 & 3: Shri Kapil Thakur, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of Shri Rafic S/o Shri Ram Nath V. P.O. Mandhala, Distt. Solan, H.P. by the (i) The General Manager, M/s GMP Technical Solution, Village-Kurawala, P.O. Mandhala, Distt. Solan (Principal Employer) (ii) M/s S.S. Engineers, Near Bus Stand, Baddi, Distt. Solan, H.P. (Contractor Company) verbally *w.e.f.* 05-11-2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers?**"

2. Briefly, the case of the petitioner is that in the month of September 2006, he was employed as helper by respondent No.1 through their agent *i.e.* respondent No. 2 and he continued as such till 31-10-2008 and his last drawing wages were ₹ 3395/- per month. It is further stated that the work and conduct of the petitioner was more than satisfactory and he was never asked to any explanation call, censure or show cause notice etc. That about three months before retrenchment from the service, the management was trying to make resignation from the petitioner but he always denied to do so and on 1-11-2008, when he came to the factory for duty, he was not allowed to enter the factory gate by the security guard and thereafter the petitioner tried to meet the management but of no avail and his services were terminated and thereafter on 5-11-2008, the petitioner raised an industrial dispute and during conciliation meeting some dues, wages and overtime wages were paid to the petitioner and without reaching any conclusion about the reinstatement the conciliation proceedings were ended. It is also stated that neither any notice nor compensation was paid to the petitioner. Against this back-drop a prayer has been made that he be reinstated in service with seniority and continuity along-with full back wages.

3. By filing separate reply, the respondent No. 1 contested the claim filed by the petitioner wherein preliminary objections have been raised that the claim petition is neither competent nor maintainable, that there exists no employer-employee relationship between the petitioner and respondent No.1 and that the petitioner is gainfully employed. On merits, it has been asserted that in terms of agreement executed between respondent No.1 and respondent No.2, the petitioner was a workman of respondent No.2 (contractor), who deputed the petitioner for loading and unloading work which is not of perennial nature with respondent No.1 and that the petitioner was a contractual labour and the respondent No.1 had a valid registration to employee contract labour under Contract Labour (Regulation and Abolition) Act, 1974 and HP Contract Labour (Regulation and Abolition Rules 1974 and respondent No.2 had a licence to provide the contract labour under the Contract Labour Act, hence, there exists no relationship of employeremployee between the petitioner and respondent No.1. Since, the petitioner was the worker of respondent No.2, who had occasionally deputed the petitioner to do the work of imperennial nature with the respondent No.1, hence, the respondent No.1 is nothing to do with the petitioner and even the contributions to the funds were being paid by respondent No.1 and all the statutory records were being maintained by respondent no.1 and that the control and supervision over the petitioner was of respondent No.1. It is further asserted that before the Labour-*cum*-Conciliation Officer, the dispute stand settled and as such the petitioner was not entitled to any relief as prayed by him. The respondent No.1 prayed for the dismissal of the claim petition.

4. By filing separate reply, the respondent No. 2 contested the claim filed by the petitioner wherein preliminary objections have been raised *qua* concealment of material facts, abandonment and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was the employee of respondent No. 2, who had a valid contract lincece under the Contract Labour Act and in terms of agreement executed between respondent no.1 and respondent No.2, the respondent No. 2 provided the contract labour for loading and unloading work to respondent No.1. It is further asserted that the payment of wages, contribution under ESI, EPF, maintenance of register was being done by respondent No. 2 and even the respondent No. 2 was exercising control and supervision over the workers deployed by it to respondent No.1 and that the

petitioner being the employee of respondent No. 2, the present dispute was settled before the conciliation officer. The respondent No.2 prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by respondents, the petitioner reiterated the averments made in the claim petition by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were framed on 3-10-2013.

(1) Whether the termination of the services of the petitioner verbally *w.e.f.* 5-11-2008 is illegal and unjustified as alleged? …*OPP.*

(2) If issue no.1 is proved in affirmative to what service benefits the petitioner isentitled to? …*OPP.*

(3) Whether this petition against respondent no.1 is neither competent nor maintainable as alleged in preliminary objections No. 1 to 4? ...*OPR-1.*

(4) Whether this petition against respondent No. 2 is neither competent nor maintainable as the petitioner himself, on his own sweet will had abandoned the job on being settled the dispute as alleged? …*OPR-2.*

(5) Whether the petitioner is gainfully employed as alleged? If so, its effect? …*OPR-2.*

(6) Whether this petition is bad for misjoinder of parties as alleged? …*OPRs.*

(7) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No.3 Yes.

Issue No.4 No.

Issue No.5 Yes

Issue No.6 Decided accordingly

Relief : Reference answered in favour of the petitioner and against respondent No. 2.

REASONS FOR FINDINGS

Issues No.1, 3 and 6 :

9. Being interlinked and correlated all these issues are taken up together for discussion and decision.

10. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PA wherein he reiterated almost all the averments as made in the claim petition. In cross-examination on behalf of respondent No.1 he expressed his ignorance that he was the employee of respondent No. 2. He denied that his salary, ESI, EPF contribution was being deposited by contractor. He further denied that he was doing the work of loading and unloading. He also denied that *vide* mark P-2 he had entered into a settlement before the Labour Officer. He denied that he was not the employee of respondent No.1 company and his services were not terminated by it. When cross-examined on behalf of respondent No. 2, he admitted that he was the contract labour with S.S. Engineering. He denied that his salary was being paid by S.S. Engineering who also used to mark his attendance and his ESI, EPF etc. was being deducted by contractor. He further denied that respondent No. 2 used to supervise his work. He also denied that he had taken the full and final dues from respondent No.2.

11. On the other hand the respondent No.1 examined one Shri Kashmir Singh Thakur (Head HR) as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed by respondent No.1. He also tendered in evidence authority letter Ex. RW-1/B, registration certificate Ex. RW-1/C, licence mark RX, PF contribution slip mark RY, letter dated 19-9-2010 mark RZ, reply to demand notice dated 27-8-2009 mark RZ/1, contract issued to respondent No. 2 mark RZ/2, conciliation proceedings dated 9-4-2009 mark RZ-3, copy of attendance register and payment of wages register of respondent No.2 mark RZ/4. In cross-examination on behalf of respondent No.2, he admitted that the petitioner being the employee of respondent No. 2 was deployed with respondent No.1 for loading and unloading work. He further admitted that the respondent No. 2 maintained register and other record of the petitioner and pay wages, maintain EPF and ESI record etc. He also admitted that the contribution towards ESI and EPF was contributed by respondent No.2. He admitted that the petitioner was a worker of respondent No. 2 and that control and supervision of the petitioner was with the respondent No. 2. When cross-examined on behalf of petitioner he expressed his ignorance that the petitioner was drawing ₹ 3395/- P.M. He denied that the respondent No. 2 was an agent of respondent No.1 company. He denied that the respondent No.1 tried to obtain the resignation from the petitioner before his termination. He further denied that on 1-11-2008 the petitioner was not allowed to enter inside the factory. He also denied that the petitioner was the employee of respondent No.1 and he was illegally terminated.

12. The respondent No.2 examined two RWs. RW-2 Shri Ashok Kumar tendered in evidence his affidavit Ex. RW-2/A wherein he reiterated almost all the averments as made in the reply filed by respondent No.2. He also tendered in evidence authority letter Ex. RW-2/B, the copy of licence of contract labour Ex. RW-2/C, the copy of contract for loading and unloading Ex. RW-2/D, the copy of wage register Ex. RW-2/E and the copy of attendance register Ex. RW-2/F. In cross-examination on behalf of respondent no.1 he admitted that he was the contractor with the company. He further admitted that the ESI, PF and all other records pertaining to the workers were being maintained by them. He also admitted that the workers engaged by respondent No. 2 have no concern with the company (respondent No.1). When cross-examined on behalf of petitioner he denied that the wage register was not maintained as per Contract Labour Act. He stated that the supervisor of respondent No. 2 used to disburse the salary to the workmen in the factory of respondent No. 2. He further stated that the respondent No. 2 used to supply 40-45 workers per day to respondent no.1. He denied that the petitioner was the employee of respondent No.1. He further denied that the services of the petitioner were terminated by respondent No.1. He also denied that the register was not properly maintained and is fabricated.

13. RW-3 Shri Surinder Kumar, Senior Assistant from the office of Labour Officer, Baddi had produced the summoned record *i.e.* the copy of conciliation proceedings dated 9-4-2009 Ex. RW-3/A, settlement Ex. RW-3/B, the conciliation proceedings dated 12-2-2008 and 13-3-2009 Ex.

RW-3/C. in cross-examination on behalf of petitioner he admitted that Ex. RW-3/A to Ex. RW-3/C have not been written by him. He further admitted that there is no stamp of Labour Officer affixed on Ex. RW-3/A to Ex. RW-3/C.

14. I have closely scrutinized the entire evidence on record and after the closure scrutiny thereof it has become clear that the petitioner was working as a helper in the premises of respondent No. 1 company and his services were terminated on 5-11-2008. It has also become clear that the respondent No. 1 (Company) had a certificate of registration Ex. RW-1/C from the prescribed authority and the respondent No. 2 (contractor) had the licence Ex. RW-2/C issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of Contract Labour (Abolition and Regulation) Act. It has also become clear that *vide* agreement Ex. RW-2/D, the respondent No.1 company had entered into a contract with respondent No. 2 contractor for loading and unloading of material. In **(2009) 13 SCC titled as International Airport Authority of India** *Vs.* **International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court that the principle employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him and the workers being the employee of the contractor, the ultimate supervision and control lies with the contractor. The relevant portion of the aforesaid judgment is reproduced as under:

> "38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."
>
> 53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.
>
> 54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

15. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was the employee of respondent No.1 company. Rather in cross-examination he admitted that he was the contract labour with S.S. Engineering *i.e.* respondent No.2. He further admitted in cross-examination that he cannot produce any document to show that he was the employee of respondent No.1 company. No appointment letter has been produced by the petitioner in order to show that he

was engaged by respondent no.1 company. On the other hand RW-1 admitted in cross-examination that there was a contract with respondent No.1 company and respondent No.2 contractor to deploy contract labour the copy of which is Ex. RW-2/D. He also stated in cross examination that he was maintaining the record of ESI, PF and all other records pertaining to the workers. He further stated in cross-examination that the supervisor of the contractor used to assign the work to the contract labour and disburse the salary to the workers in the factory. He also stated that the respondent No. 2 (contractor) used to supply 40-45 workers per day to respondent No.1 company. RW-2 admitted in cross-examination that their supervisor used to disburse the salary to the workers. The perusal of the evidence on record further makes it clear that the respondent No. 2 contractor was maintaining the wage register Ex. RW-2/E and attendance register Ex. RW-2/F of its workers including the petitioner. Thus in view of the aforesaid judgment of the Hon'ble Supreme Court and also in view of the entire evidence and material on record particularly the admission of the petitioner indicates that the petitioner was the worker of respondent No. 2 contractor and he was under the complete control and supervision of respondent No. 2 as the respondent No. 2 used to assign the work and disburse the salary to the workers, maintain the entire record under the labour laws and make the contributions towards ESI and EPF of all workers including the petitioner. Hence, it can be safely held that the petitioner was not the employee of respondent no.1 company but he was the employee of respondent No. 2 contractor. The relationship of employer and employee between the petitioner and respondent No.1 company has not been established. Hence, in view of the entire evidence as discussed above I have no hesitation in holding that the petitioner was engaged by the respondent No. 2 contractor and was deployed in the premises of respondent No.1 company by the respondent No. 2 and as such the claim petition is not maintainable against respondent no.1 and is bad for misjoinder of respondent no.1company.

16. Now, the next question which arises for consideration before this Court as to whether the services of the petitioner were illegally terminated by the respondent No.2 contractor. It is not disputed that the petitioner was engaged by the respondent No.2 in the month of September, 2006 and he continued as such till 31-10-2008 meaning thereby the petitioner had completed 240 days in each calendar year preceding his termination. It is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No.2 contractor to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No.2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** *Vs.* **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

17. In the present case also as observed aforesaid, the respondent No.2 has failed to comply with the provisions of section 25-F of the Act before terminating the services of the

petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* 5-11-2008 by the respondent No. 2 without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Hence, all these issues are decided accordingly.

Issues No.2 & 5 :

18. Being interlinked both these issues are taken up together for discussion and decision.

19. Since, I have held under issues no.1, 3 and 6 above that the termination of services of the petitioner by the respondent No.2 contractor without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** *Vs.* **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** *Vs.* **S.C. Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Rather, he admitted in cross-examination that he had been doing agriculture work. In **(2007) 10 SCC 765, North East Karnatka Road Transport Corporation Vs. M. Nagangouda**, it has been held by the Hon'ble Supreme Court that gainful employment would also include self employment. The relevant portion of the aforesaid judgment is reproduced as under:

> "On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self employment wherefrom income is generated. Income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court

was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".

(*Emphasis supplies*).

Therefore, in view of the aforesaid judgments of the Hon'ble Supreme Court, coupled with the fact that the petitioner had been doing the agricultural work for livelihood, I have no hesitation in holding that the petitioner is not entitled to any back-wages. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No.2 is partly decided in favour of the petitioner and against the respondent No.2 contractor whereas issue No. 5 is decided against the petitioner and in favour of respondent No.2.

Issue No. 4 :

23. The learned counsel for the respondent No.2 contended that the petitioner had left the job at his own will as the dispute with respondent No.2 stood settled in the conciliation proceedings held before the Labour Officer and in this respect he has relied upon the conciliation proceedings Ex. RW-3/A and Ex. RW-3/C and settlement Ex. RW-3/B. However, the perusal of the aforesaid proceedings shows that there was a dispute between the petitioner and other workers with the respondent No.2 regarding the payment of one month's wages and overtime wages. However, the present dispute/reference is regarding the termination of the services of the petitioner. Therefore, from the proceedings Ex. RW-3/A and Ex. RW-3/C and settlement Ex. RW-3/B, it cannot be said that the present dispute regarding the termination of the services of the petitioner stood settled. The learned counsel for respondent No.2 has failed to explain as to why the reference was sent to this Court by the appropriate government for adjudication if the dispute was settled. Morover there is no *iota* of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent No.2. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others** *Vs.* **Chemicals and Fibers India Ltd.** where it has been held that:

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. *vs.* Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Hence, in view of the law laid down *(supra),* and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own. Accordingly, this issue is decided in favour of the petitioner and against respondent No. 2.

RELIEF

As a sequel to my above discussion and findings on issues No.1 to 6, the claim of the petitioner succeeds and is hereby partly allowed and the respondent No. 2 is directed to reinstate

the petitioner in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent No. 2. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 8th Day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla
At Camp Court Solan.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA (H.P.)**

App. No. 15 of 2017
Instituted on. 2-3-2017
Decided on 23-3-2017

President/General Secretary M/s Landis + Gyr. Ltd., Workers Union C/o Shri Vishal Singh M/s Landis+Gyr. Ltd., Village and Post Office Thana, Tehsil Nalagarh, District Solan, HP.
..Applicant.

Vs.

M/s Landis+Gyr Ltd., Village and Post Office Thana, Tehsil Nalagarh District Solan, HP through its Employer/Factory Manager. *…Respondent.*

Application under section 10 (4) and section 2b of the Industrial Disputes Act, 1947 read with section 151 CPC for staying the transfer order of 20 workers dated 9-2-2017.

For petitioner : Shri R.K Khidta, Advocate

For respondent : Shri Rajeev Sharma, Advocate

ORDER

This order shall dispose of an application filed by the applicant under section 10 (4) and section 2b of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) readwith section 151 CPC for staying the transfer order of 20 workers dated 9-2-2017 from Baddi plant to Kolkata plant (West Bengal) during the pendency of the reference.

2. Briefly the case of the applicant is that he had raised the demand notice dated nill received by the applicant company on 19-1-2016 for the long term settlement and a copy of which was also sent to the Labour Officer, Baddi but due to the adamant attitude of the respondent, the conciliation proceedings failed and the case of the applicant had been sent to this Court for

adjudication. It is further averred that the workers working with the respondent company had formed the Union and S/Shri Vishal Singh and Govind Sharma had been elected as President and General Secretary of the union and they raised the demand notice on behalf of the workers union. That during the pendency of the case/reference, the respondent company had issued transfer letters to 20 workers from Baddi plant to Kolkata plant without any reason and by ignoring all rules which is totally illegal and direct interference in the proceedings of this Court as the reference regarding the settlement of the demand of the 109 workers is pending before this Court and that without the decision of the reference, the respondent has no *locus standi* to pass any order against the workers and even neither the senior workers nor the junior workers have been transferred to Kolkata and the purpose of issuing the transfer order of the 20 workers by the respondent company is to victimize the workers and to escape from the legal liability as per the Act. Since, the respondent company is aware about the pendency of the reference and had knowingly and intentionally ordered to transfer the 20 workers which is illegal and against the provisions of the Act and in case the transfer orders of 20 workers is not stayed great injustice will be caused to the applicant which cannot be compensated in any manner. Against this backdrop, it is prayed that the transfer order dated 9-2-2017 of 20 workers from Baddi plant to Kolkata plant (West Bengal) during the pendency of the reference be stayed till the final disposal of the main reference and the workers be allowed to work at Baddi as they were working prior to the issuance of transfer order dated 9-2-2017.

3. The application has been contested by the respondent by filing reply wherein preliminary objection had been taken *qua* maintainability and that the applicant has not come to this Court with clean hands. On merits, it has been asserted that the present reference is not for the transfer of the employees by the respondent and as such the order of transfer under challenge in this application is not incidental to the present reference. It is further asserted that the applicant is misinterpreting section 33 (C) of the Act as when the transfer orders were issued neither the proceedings for conciliation were pending before any authority nor any proceedings were pending for adjudication before any Industrial Tribunal/Labour Court. It is also asserted that the transfer is the prerogative of the employer and said order is not change of service condition or of termination or retrenchment in any way and since the workers failed to achieve the productivity targets and the company was running in losses of ₹ 66 crores approximately, hence, transfer order had been issued and even the respondent had not transferred the services of 20 workers as of punishment but the said transfer orders are for the betterment of the employees and the respondent company. The provisions of section 9-A of the Act are not attracted in the present application as the fourth schedule of the Act is not having any simmering of the transfer. The employer is having the right to transfer its employees as per the terms and conditions of the letter of appointment so accepted by the employees at the time of signing of the letter of appointment in token of the acceptance of the terms and conditions so laid down by the employer. The respondent prayed for the dismissal of the application.

4. Besides having heard the Ld. counsels for the parties, I have also gone through the record of the case carefully.

5. The learned counsel for the applicant contended that the applicant union raised the demands *vide* demand notice Annexure P-4 for its fulfillment before the Labour-*cum*-Conciliation Officer. However, the conciliation proceedings failed and the matter was referred to this Court for adjudication but during the pendency of the case/reference, the respondent company had issued transfer orders to 20 workers from Baddi plant to Kolkata plant (West Bengal) which is clear cut victimization of the workers. He further contended that by transferring the workers during the pendency of the reference, the respondent company has violated the mandatory provisions of section 9-A and section 33 of the Act.

6. On the other hand, learned counsel for the respondent contended that the application filed by the applicant union for staying the transfer orders is not maintainable as it is beyond the

terms of reference made to this Court. He further contended that the transfer is the prerogative of the employer and it is not the change of service condition and since the workers were not working as per the set norms and failed to achieve the productivity targets and also the company is running in loss, the services of 20 workers were transferred. He further contended that the provisions of section 9-A and section 33 of the Act are not at all attracted to the present case and the transfer is as per the terms and conditions of the letters of appointment so accepted by the employees and also in accordance with law.

7. By means of the present application for interim relief, the petitioner union has prayed that the transfer of 20 workers dated 9-2-2017 from Baddi plant to Kolkata (West Bengal) be stayed during the pendency of the present reference between the parties and the workers may be allowed to work at Baddi. It is not disputed that 20 workers of the applicant union have been transferred from Baddi plant to Kolkata (West Bengal) by the respondent management *vide* transfer orders dated 9-2-2017.

8. The first contention of the learned counsel for the applicant is that the transfer is illegal as it is against the Model Standing Orders of the State of H.P. It is not in dispute that the respondent company has no Certified Standing Orders of its own, therefore, it governed by the Model Standing Orders of the State of H.P. At this stage, it would be relevant to reproduce the transfer clause of the Model Standing Orders of the State of H.P., which reads as under:

> "Transfer-A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:
>
> Provided that the wages, grade, continuity of service other conditions of service of the workman are not adversely affected by such transfers:
>
> Provided further that workman is transferred from one job to another, which capable of doing Provided further that where the transfer involves moving from one Station to another such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment.
>
> Provided further that (i) a reasonable notice is given to such workman and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid travelling allowance including the transport charges, and fifty per cent thereof to meet incidental charges."

9. Therefore, the perusal of the aforesaid transfer clause shows that where the transfer involves moving from one station to other such transfer shall take place either with the consent of workman or where there is specific provision to that effect in the letter of appointment. The perusal of the appointment letters issued to the aforesaid 20 workers show that the respondent management has the right to transfer its workers to any other location in India. The relevant portion of the appointment letter reads as under:

"3. **Location.**

> You will be located at the company's Factory at baddi, Himachal Pradesh. However, Management reserves its right to transfer you to any other location in India or send you on deputation to any other establishment in part of the country or abroad."

Since, there is a specific provision in the appointment letter regarding the transfer of the workers to any location in India, hence, the consent of workman is not required. At this stage, it would be relevant to reproduce the relevant portion of transfer orders which reads as under:

"Considering the business exigencies of the company, you are being transferred to our Joka Plant at Kolkata (West Bangal) forthwith. To enable you to prepare for proceeding to Joka, you are being relieved from your present assignment with immediate effect. You are instructed to report for duty at our Joka Plant on or before 21st Feb., 2017……"

"Please note *vide* clause No. 3 of Appointment letter L+GHR: 07 dated October, 31, 2007 issued to you, your services are transferable to any other location within the country. On transfer, the salary benefits and other conditions of your employment shall continue to remain the same. However, in addition to your present emoluments you shall be paid City Compensatory Allowance amounting to ₹ 3,000/- (₹ Three Thousand only) per month. On shifting to Joka from Baddi you and your family's actual travel and transport expenses through public transport shall be reimbursed to you on submission of your claim with original bills. All salaries shall be paid from Joka Plant."

Therefore, the perusal of the transfer orders dated 9-2-2017 shows that reasonable notice has been given to the workers and reasonable joining time has been allowed as by means of the transfer orders dated 9-2-2017 all the transferred workers were relieved with immediate effect and they were asked to join their duties on or before 21-2-2017. Moreover, the service condition of the transferred workers also remained unchanged as it has been specifically mentioned in the transfer orders that the salary benefits and other conditions of the employment shall continue to remain the same. Hence, it cannot be said that the transfer orders dated 9-2-2017 are voilative of the Model Standing Orders of the State of H.P.

10. Now, the next question which arises for consideration before this Court is as to whether there is any violation of section 9-A of the Act. At this stage, it would be relevant to reproduce section 9-A of the Act which reads as under:

"**Notice of change**.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change……

However, in the opinion of this Court the provisions of section 9-A of the Act are not attracted in the present case as the matter with respect to the transfer of workers has not been specified in the 4th Schedule of the Act.

11. Coming to the next contention of the learned counsel for the applicant that the transfer orders are in violation of the provisions of section 33 (1)(a) of the Act. At this stage, it would be relevant to reproduce section 33 (1) (a) of the Act which reads as under:

"**Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings**.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2 an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding……

Now, keeping in view the provisions of section 33(1)(a), it is necessary to examine the facts in the present case. It is not in dispute that the applicant union raised the demands *vide* demand

notice dated nil for the settlement for the period from Feb., 2016 to Jan., 2017 and the following demands have been raised:

1. **Increase in the salary for each of three years starting 1st Feb., 2016 and upto Jan., 2019 of workmen according to their period in service.**

2. **Dearness Allowance.**

3. **Medical benefit.**

4. **Leave Benefit.**

5. **The transport facility and canteen facility should be made free of cost for all workmen.**

The appropriate government had referred the dispute relating to the aforesaid notice of demands to this Tribunal for adjudication. However, the perusal of the demand notice shows that the demands which have been raised by the applicant union are only the financial demands and are not connected with the transfer of any worker. The perusal of section 33(1)(a) of the Act shows that during the pendency of any conciliation proceedings, no employer shall alter the conditions of service of a workman in regard to any matter connected with the dispute without the express permission in writing of the authority before which the proceedings are pending. However, in the present case, the orders of transfer are not connected with the dispute which has been raised by way of demand notice. Moreover, section 33 of the Act laid down that no employer can change the service condition of the workers by way of discharge or dismissal. It has been held by the **Hon'ble High Court of Madras in 1995 LLR 744, G. Prabhakaran** *Vs.* **Southern Petrochemicals Industries Corporation Ltd.** that a mere transfer would not amount to change in conditions of service. Therefore, it cannot be said that there is any violation of section 33 of the Act as contended by the learned counsel for the applicant.

12. As observed earlier, from the closer scrutiny of the terms of reference, it has become clear that the workers of the applicant union did not raise any dispute regarding the transfer of 20 workers before the conciliation officer as well as before the appropriate government. The terms of the reference show that the point of dispute between the parties is not regarding the transfer of the workers by the respondent company but the financial demands raised by the union *vide* demand notice for its fulfillment before the employer/management. That is why reference was expressed to say as to whether the demands raised by the workers union *vide* demand notice dated nil for its fulfillment before the Plant Head are legal and justified and if yes, what relief, other monetary and other service benefits the concerned aggrieved workmen are entitled to from the above employer. In other words by the reference, this Court was not called upon by the government to adjudicate upon the question as to whether the transfer of the 20 workers of the applicant union is illegal and unjustified. The reference is only limited to the narrow question as to whether the demands of the worker union which have been raised *vide* demand charter are legal and justified.

13. It is a settled law that the jurisdiction of the Industrial Court to decide the industrial disputes is determined by the terms of reference. Where in an order referring an industrial dispute to a Tribunal under section 10 (1) of the Act, the appropriate government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of dispute referred to it but must confine its adjudication to the points specifically mentioned and anything which is incidental thereto. The jurisdiction of the Tribunal is circumscribed by the terms of reference and not by the pleadings. In **(2004) 10 SCC 460, Mukand Ltd.** *Vs.* **Mukand Staff and Officers**

Association, the Hon'ble Supreme Court has held that the Labour Court is the creature of the reference and cannot travel beyond the terms of reference. The relevant portion of the aforesaid judgment is reproduced as under:

> "36. We, therefore, hold that the reference is limited to the dispute between the Company and the Workmen employed by them and that the Tribunal, being the creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference.

In the present case also as observed earlier, as per the terms of reference the point of dispute between the parties is not regarding the transfer of the 20 workers but is with regard to the legality and justification of the financial demands raised by the petitioner union *vide* demand notice dated nil. Moreover, the dispute with respect to the transfer of workers is not a matter incidental to the terms of reference sent to this Court for adjudication. Therefore, in view of the law laid down by the Hon'ble Supreme Court, this Court has no jurisdiction to go behind the terms of reference.

Hence, in view of the law laid down (*supra*) and also in view of my aforesaid discussion, I have no hesitation in holding that the applicant union is not entitled for the stay of the transfer orders of 20 workers dated 9-2-2017 from Baddi Plant to Kolkata (West Bangal) and as such the application is dismissed. Be it stated that any expression of opinion given in this order is only for the purpose of disposal of the present application and does not mean an expression of opinion on the merits of the case. Application, after completion, be tagged with the main case file.

Announced in the open Court today on this 23rd day of March, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. No. 79 of 2014
Instituted on 24-9-2014
Decided on 5-12-2017

Salochna w/o Vijay Kumar C/o A.K Sharma, Sai Road Gullerwala Baddi, H.P. ..*Petitioner.*

VERSUS

Satya Parkash Aggarwal, Prop. M/s SPA Soaps and Surfactants, Plot no.12, Khadin, Parwanoo, District Solan, H.P. ..*Respondent..*

Petition under section 2 A of Industrial Disputes (Amended) Act, 2010

For petitioner : Shri A. K. Sharma, AR

For respondent : Shri Bhagwan Chand, Advocate

AWARD/ORDER

Briefly, the case of the petitioner is that *w.e.f.* 1-3-2009, she was employed by the respondent as compressor operator and was drawing last wages of ₹ 4000/- per month which were less than the minimum wages. It is further stated that the petitioner had completed the service of more than 240 days continuously before her illegal termination and her services had been terminated on 22-8-2013 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice was issued to her nor any compensation was paid. It is also stated that the petitioner served a demand notice dated 13-10-2013 but during conciliation proceedings, no settlement could be arrived at due to adamant attitude of the respondent. Against this back-drop a prayer has been made that she be reinstated in service with back-wages and other consequential benefits.

2. By filing reply, the respondent contested the claim filed by the petitioner wherein it has been asserted that the petitioner had filed the false and frivolous application before this Court with the intention to grab money from the respondent. It is further asserted that the respondent firm came into existence on 30-3-2010, hence, the claim of the petitioner regarding her engagement on 1-3-2009 is wrong. It is also asserted that *w.e.f.* 22-8-2013, petitioner had willfully left the job without any intimation to the respondent and even during the service she was misbehaving with the staff and the other labourers for which she was warned. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder the petitioner has reaffirmed his allegations by denying those of the respondent.

4. Pleadings of the parties gave rise to the following issues which were framed on 20-7-2016.

(1) Whether the termination of the services of the petitioner *w.e.f.* 22-8-2013, by the respondent without complying with the provisions of the industrial Disputes Act, 1947 is illegal and unjustified as alleged? …*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?

(3) Relief.

5. I have heard the AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Relief : Application dismissed per operative part of order/award.

REASONS FOR FINDINGS

Issue No. 1 :

7. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving her any notice as required under section 25-F

of the Act especially when she had completed more than 240 days in twelve calendar months preceding her termination.

8. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent who herself had abandoned the job without any intimation to the respondent and she had not resumed her duties. He further contended that since the petitioner had not completed 240 days in twelve calendar months, hence, there is no question for issuance of notice and paying compensation.

9. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. In cross-examination she denied that she had left the job at her own. She further denied that she used filthy language with the staff if her husband talked with other staff. She also denied that she had not completed 240 days in each calendar year.

10. On the other hand the respondent examined one Shri Bishan Chand Sharma, Factory Manager of respondent company as RW-1, who deposed that the factory of the respondent at Parwanoo has been taken over by Shri K.C. Sardana in October 2017 and now Shri K. C. Sardana is the proprietor of the respondent. He further stated that the petitioner was engaged by the respondent in Jan. 2013 and she worked till July 2013 and thereafter she had left the job at her own without any prior notice to the respondent. He also stated that the respondent had written a letter and also informed the petitioner telephonically to resume the duties but she did not resume the same. The petitioner had never completed 240 days in any calendar year. In cross-examination, he denied that the petitioner was engaged on 1-3-2009 and she had worked till 22-8-2013. He further denied that the petitioner had completed 240 days in preceding twelve months. He also denied that the services of the petitioner were terminated illegally without issuance of any notice and payment of any compensation.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as compressor operator with the respondent. No doubt, the petitioner has claimed that she had completed more than 240 days in twelve calendar months preceding her termination but she has failed to prove on record that she had completed 240 days in twelve calendar months preceding her termination as neither any document has been placed on record by the petitioner nor examined any witness to prove the fact that before her termination she had completed 240 days in twelve calendar months. The petitioner has failed to place on record any material which could go to show that she had completed 240 days in twelve calendar months preceding her termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in***

employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days in preceding twelve months lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that she had put in 240 days in twelve calendar months preceding her termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding her termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Accordingly this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

12. Since, the petitioner has failed to prove issue No.1, this issue becomes redundant.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 5th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

App. No. 80 of 2014
Instituted on 24-9-2014
Decided on 5-12-2017

Vijay Kumar s/o Shri Sher Singh C/o A. K. Sharma, Sai Road Gullerwala Baddi, H.P.
..Petitioner.

VERSUS

Satya Parkash Aggarwal, Prop. M/s SPA Soaps and Surfactants, Plot no.12, Khadin, Parwanoo District Solan, H.P. *..Respondent..*

Petition under section 2 A of Industrial Disputes (Amended) Act, 2010

For petitioner : Shri A.K. Sharma, AR

For respondent : Shri Bhagwan Chand, Advocate

AWARD/ORDER

Briefly, the case of the petitioner is that *w.e.f.* 1-3-2009, he was employed by the respondent as compressor operator and was drawing last wages of ₹ 5700/- per month. It is further stated that the petitioner had completed the service of more than 240 days continuously before his illegal termination and his services had been terminated on 22-8-2013 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as neither any notice was issued to him nor any compensation was paid. It is also stated that the petitioner served a demand notice dated 13-10-2013 but during conciliation proceedings, no settlement could be arrived at due to adamant attitude of the respondent. Against this back-drop a prayer has been made that he be reinstated in service with back-wages and other consequential benefits.

2. By filing reply, the respondent contested the claim filed by the petitioner wherein it has been asserted that the petitioner had filed the false and frivolous application before this Court with the intention to grab money from the respondent. It is further asserted that the respondent firm came into existence on 30-3-2010, hence, the claim of the petitioner regarding his engagement on 1-3-2009 is wrong. It is also asserted that *w.e.f.* 22-8-2013, petitioner had willfully left the job without any intimation to the respondent and even during the service he was misbehaving with the staff and the other labourers for which he was warned. The respondent prayed for the dismissal of the claim petition.

3. By filing rejoinder the petitioner has reaffirmed his allegations by denying those of the respondent.

4. Pleadings of the parties gave rise to the following issues which were framed on 20-7-2016.

(1) Whether the termination of the services of the petitioner *w.e.f.* 22-8-2013, by the respondent without complying with the provisions of the industrial Disputes Act, 1947 is illegal and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..*OPP.*

(3) Relief.

5. I have heard the AR for the petitioner and learned counsel for the respondent and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Relief : Application dismissed per operative part of order/award.

REASONS FOR FINDINGS

Issue No. 1:

7. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in twelve calendar months preceding his termination.

8. On the other hand, learned counsel for the respondent contended that the services of the petitioner have never been terminated by the respondent who himself had abandoned the job without any intimation to the respondent and he had not resumed her duties. He further contended that since the petitioner had not completed 240 days in twelve calendar months, hence, there is no question for issuance of notice and paying compensation.

9. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination he denied that he had left the job at his own. He further denied that he used to misbehave with Bachan Singh Sharma and Rajan Sharma for which he was warned orally. He also denied that he had not completed 240 days in each calendar year.

10. On the other hand the respondent examined one Shri Bishan Chand Sharma, Factory Manager of respondent company as RW-1, who deposed that the factory of the respondent at Parwanoo has been taken over by Shri K.C. Sardana in October 2017 and now Shri K. C. Sardana is the proprietor of the respondent. He further stated that the petitioner was engaged by the respondent in Jan., 2013 and he worked till July 2013 and thereafter he had left the job at his own without any prior notice to the respondent. He also stated that the respondent had written a letter and also informed the petitioner telephonically to resume the duties but he did not resume the same. The petitioner had never completed 240 days in any calendar year. In cross examination, he denied that the petitioner was engaged on 1-3-2009 and he had worked till 22-8-2013. He further denied that the petitioner had completed 240 days in preceding twelve months. He also denied that the services of the petitioner were terminated illegally without issuance of any notice and payment of any compensation.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as compressor operator with the respondent. No doubt, the petitioner has claimed that he had completed more than 240 days in twelve calendar months preceding his termination but he has failed to prove on record that he had completed 240 days in twelve calendar months preceding his termination as neither any document has been placed on record by the petitioner nor examined any witness to prove the fact that before his termination he had completed 240 days in twelve calendar months. The petitioner has failed to place on record any material which could go to show that he had completed 240 days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days in preceding twelve months lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Accordingly this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

12. Since, the petitioner has failed to prove issue No.1, this issue becomes redundant.

RELIEF :

As a sequel to my findings on the aforesaid issues, the claim petition filed by the petitioner deserves to be dismissed and accordingly, the same is dismissed. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 5th day of December, 2017.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Sh. Rajeev Mahajan s/o Late Sh. Sudershan Mahajan, Resident of Mohalla Sapdi, Chamba Town, Tehsil & District Chamba, H. P., aged 33 years (Bridegroom/Husband).

and

Ruchika Kumar d/o Late Shri Vijay Kumar, resident of Mohalla Mugla, P.O. Hardaspura, Tehsil & Distt. Chamba, H.P. aged 29 years (Bride/Wife) . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriage Himachal Pradesh, Shimla

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriage Act, 1996 (Act No. 21of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriage Act, 1996 alongwith relevant record and affidavits stating therein that they have solemnized their marriage on dated 05-03-2016 at their place of residence with Hindu rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Municipal Council Chamba,Tehsil and Distt. Chamba, H.P. well in time;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriage and now, therefore, necessary order for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has nay objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 10-05-2018 at 2.00 P.M. either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 06-04-2018.

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Deepti Mandhotra HPAS, Sub-Divisional Magistrate Chamba, District Chamba (H. P.)

Raj Kumar s/o Late Shri Dewan Chand Chhabra, Mohalla Upper Julakari, Chamba Town, Tehsil & District Chamba, H.P., aged 49 years (Bridegroom/Husband) .

and

Dr. Baljit Kaur d/o Shri Kashmir Singh Sandhu, resident of 242-A, Teg Colony Patiala, Punjab, aged 39 years (Bridge/Wife) . . *Applicants.*

Versus

1. The General Public
2. The Registrar of Marriages Himachal Pradesh, Shimla

Subject.—Registration of Marriage under Section 16 of the Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49, 2001).

PUBLIC NOTICE

Whereas, the above named applicants have made an application before me under Section 16 of Special Marriage Act, 1954 alongwith affidavits and other relevant documents stating therein that they have solemnized their marriage on dated 14-02-2014 at their place of residence and that they have been living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is, hereby informed through this notice that any person (s) who has any objection regarding registration of this marriage can file an objection personally or in writing before this court on or before 30-05-2018.

In the event of their failure to do so, order shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard and marriage will be registered accordingly.

Issued under my hand and seal of the Court on this 09-04- 2018.

Seal.

DEEPTI MANDHOTRA HPAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

ब अदालत कार्यकारी दण्डाधिकारी, तहसील डलहौजी जिला चम्बा हि0 प्र0

श्री किरपो राम पुत्र स्व0 श्री फकीर चन्द, निवासी शेरपुर, तहसील डलहौजी, जिला चम्बा .. प्राथी।

बनाम

आम जनता .. प्रत्यार्थीगण।

प्रार्थना–पत्र बराए नाम दरुस्ती स्व0 श्री फकीर उर्फ फकीर चन्द बारा इश्तहार।

अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यानहल्फी बमय अन्य कागजात श्री किरपो राम ने इस आशय से गुजारा है कि उसके पिता का सही नाम फकीर चन्द है लेकिन जमाबन्दी वर्ष 2011–12 मुहाल शेरपुर, पटवार वृत्त शेरपुर के राजस्व अभिलेख में फकीरू गलत दर्ज है। लेकिन मेरे आधार कार्ड, परिवार नकल शेरपुर में फकीर चन्द दर्ज है जो कि सही है तथा यह कि राजस्व अभिलेख में मेरे पिता का सही नाम फकीर चन्द किया जाये।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के नाम दरुस्ती बारे यदि किसी को उजर / एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी में दिनांक 27–04–2018 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर न आने कि सूरत में एकतरफा कार्यवाही अमल में लाई जा करके नाम दरूस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 26–03–2018 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर

हस्ताक्षरित– /,
कार्यकारी दण्डाधिकारी,
तहसील डलहौजी, जिला चम्बा, हि0 प्र0।

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In the Court of Sh. Arindam Chaudhary, I.A.S., Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur, Himachal Pradesh**

In the matter of :

1. Sh. Vijay Karan Singh aged 28 years s/o Veer Varinder Singh, Near Shiv Mandir Bassi Jamwal, P.O. Jandi, Tehsil Hira Nagar, District Kathua (J&k).

2. Smt. Sudarshana Kumari aged 30 years d/o Shri Ramesh Chand, resident of Village Panjahli, P.O. Dugha, Tehsil & District Hamirpur (H.P.) ..*Applicants.*

Versus

General Public . .*Respondents.*

Subject.— Notice for registration of marriage.

Sh. Vijay Karan Singh and Smt. Sudarshana Kumari have filed an application u/s 16 of Special Marriage Act, 1954 alongwith affidavits in the court of undersigned in which they stated that Marriage be solemnized between us within three calendar months. Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 05-05-2018. The objection received after will not be entertained and marriage will be registered accordingly.

Issued today on 05-04-2018 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate, Hamirpur (H.P.).*

———————

In the Court of Sh. Arindam Chaudhary, I.A.S., Marriage Officer-cum-**Sub Divisional Magistrate, Hamirpur, Himachal Pradesh**

In the matter of :

1. Sh. Jiwan Kumar aged 23 years s/o Shri suresh Kumar, r/o Village Bhamnoh, P.O. Bagwara, Tehsil Touni Devi, District Hamirpur (H.P.).

2. Miss Arti Devi aged 20 years d/o Shri Dlip Singh, Village Bhatoh, P.O. Maseran, Tehsil Sarkaghat, District Mandi (H.P.) ..*Applicants.*

Versus

General Public . .*Respondents.*

Subject.— Notice for registration of marriage.

Sh. Jiwan Kumar & Miss Arti Devi have filed an application u/s 05 of Special Marriage Act, 1954 alongwith affidavits in the court of undersigned in which they stated that Marriage be solemnized between us within three calendar months. Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 05-05-2018. The objection received after will not be entertained and marriage will be registered accordingly.

Issued today on 05-04-2018 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Hamirpur (H.P.).

ब अदालत विवाह पंजीकरण अधिकारी, बड़सर, उप–मण्डल बड़सर, जिला हमीरपुर, हि0 प्र0

1. Sandeep Kumar s/o Prakash Chand, r/o Vill. Jubhal Kheri, Teh. Barsar, Distt. Hamirpur H.P.

2. Balma Rani d/o Khair Deen, Vill. Baggi, P.O. Bhakreri, Tehsil Barsar, Distt. Hamirpur, H.P. .. प्रार्थी।

बनाम

आम जनता .. प्रतिवादी।

आम जनता को सूचित किया जाता है कि प्रार्थी एक व दो ने इस न्यायालय में विवाह पंजीकरण करवाने का आवेदन किया है। अतः इस इश्तहार द्वारा आम जनता व उपरोक्त आवेदनकर्ता के माता–पिता को इस विवाह के पंजीकरण बारे एतराज हो तो दिनांक 15–07–2018 या इससे पूर्व प्रातः 10.00 बजे इस न्यायालय में आपत्ति दर्ज करवा सकते हैं। इस तिथि के बाद कोई उजर स्वीकार नहीं किया जावेगा।

आज दिनांक 09–04–2018 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
विवाह पंजीकरण अधिकारी,
बड़सर, उप–मण्डल बड़सर, जिला हमीरपुर, हि0 प्र0।

ब अदालत जनाब सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, चढ़ियार, जिला कांगड़ा, हि0 प्र0

किस्म मुकद्दमा : दुरुस्ती इन्द्राज

श्री नरेश कटोच पुत्र स्व0 श्री मस्त राम, निवासी गांव वन भुलाणा उप–तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) .. प्रार्थी।

बनाम

आम जनता .. प्रत्यार्थी

उपरोक्त श्री नरेश कटोच पुत्र स्व0 श्री मस्त राम, निवासी गांव वन भुलाणा, उप–तहसील चढ़ियार, जिला कांगड़ा (हि0 प्र0) ने इस कार्यालय / न्यायालय में प्रार्थना–पत्र पेश किया है कि मेरे पिता का नाम आधार कार्ड, स्कूल प्रमाण–पत्र, परिवार रजिस्टर व नौकरी दस्तावेज में सही नाम श्री मस्त राम दर्ज है परन्तु राजस्व अभिलेख महाल वन भुलाणा में इन्तकाल तस्दीक करते समय मेरे पिता का नाम मस्तक चन्द दर्ज है जो कि गलत है। आवेदक अपने पिता का नाम राजस्व अभिलेख महाल वन भुलाणा में सही नाम मस्त राम पुत्र श्री रघुवीर सिंह, निवासी गांव वन भूलाणा, डाकघर भुलाणा, उप–तहसील चढ़ियार, जिला कांगड़ा, हि0 प्र0 दर्ज करवाना चाहता है।

अतः आम जनता को इस राजपत्र इश्तहार के माध्यम से सूचित किया जाता है कि यदि इस बारे किसी को कोई उजर व एतराज हो तो वह दिनांक 27–04–2018 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर अपना पक्ष रख सकते हैं। गैर–हाजिरी की सूरत में एक तरफा कार्यवाही अमल में लाई जावेगी।

आज दिनांक 05–04–2018 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
चढ़ियार, जिला कांगड़ा, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर, हि0 प्र0

श्री विजेन्द्र पुत्र स्व0 श्री जिया लाल, निवासी गांव कोठी, तहसील कल्पा, जिला किन्नौर, हि0 प्र0

बनाम

आम जनता ग्राम कोठी, तहसील कल्पा, जिला किन्नौर, हि0 प्र0

दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

प्रार्थी श्री विजेन्द्र ने इस अदालत में प्रार्थना पत्र मय शपथ पत्र पेश किया है कि उसकी पुत्र अवनी नेगी की मृत्यु दिनांक 16–04–2017 को हुई है जिसका इन्द्राज ग्राम पंचायत कोठी में दर्ज नहीं किया गया है को अब दर्ज करने बारे आदेश जारी करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि उक्त मृत्यु तिथि ग्राम पंचायत कोठी के रिकार्ड में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 11–05–2018 को या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा सचिव, ग्राम पंचायत कोठी को उक्त मृत्यु पंजीकरण करने बारे आदेश जारी कर दिए जाएंगे।

आज दिनांक 10–04–2018 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी कर दिया गया।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर, हि0 प्र0

श्री अर्जून सिंह नेगी पुत्र स्व0 श्री अमीर दास, निवासी गांव बारंग, तहसील कल्पा, जिला किन्नौर, हि0प्र0

बनाम

आम जनता ग्राम बारंग, तहसील कल्पा, जिला किन्नौर, हि0 प्र0।

दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

प्रार्थी श्री अर्जून सिंह नेगी ने इस अदालत में प्रार्थना पत्र मय शपथ पत्र पेश किया है कि उनके माता श्रीमती मान पती की मृत्यु दिनांक 21–01–2004 को हुई है जिसका इन्द्राज ग्राम पंचायत बारंग में दर्ज नहीं किया गया है को अब दर्ज करने बारे आदेश जारी करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि उक्त मृत्यु तिथि ग्राम पंचायत बारंग के रिकार्ड में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 11–05–2018 को या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा सचिव, ग्राम पंचायत बारंग को उक्त मृत्यु पंजीकरण करने बारे आदेश जारी कर दिए जाएंगे।

आज दिनांक 10–04–2018 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी कर दिया गया।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर, हि0 प्र0।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

डावे राम पुत्र मनु, निवासी गांव थुआरी, डा0 लारजी, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश ..... प्रार्थी।

बनाम

आम जनता

विषय.––राजस्व रिकार्ड में नाम दरुस्त करने बारे।

सर्वसाधारण को सूचित किया जाता है कि डावे राम पुत्र मनु, निवासी गांव थुआरी, डा0 लारजी, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश ने इस अदालत में एक दरख्वास्त गुजारी है कि राजस्व रिकार्ड मोहाल कोटला, पटवार वृत्त बूंगा, उप–तहसील सैंज, जिला कुल्लू में इसका नाम डुमणू पुत्र मनू दर्ज है जोकि गलत है। जबकि ग्राम पंचायत लारजी के परिवार रजिस्टर में इसका नाम डावे राम पुत्र मनु दर्ज है जो कि सही है। जिसकी दरुस्ती बारे एक शपथ–पत्र भी प्रार्थी द्वारा प्रस्तुत किया गया है कि इसका नाम राजस्व रिकार्ड में डूमणू पुत्र मनु के स्थान पर डूमणु उर्फ डावे राम पुत्र मनु दर्ज किये जाने की प्रार्थना की है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि इस सम्बन्ध में किसी भी व्यक्ति को किसी प्रकार की आपत्ति हो तो वह असालतन या वकालतन अपनी आपत्ति इस न्यायालय में दिनांक 05–05–2018 या इससे पूर्व प्रस्तुत कर सकता है, अन्यथा इसका इन्द्राज राजस्व रिकार्ड मोहाल कोटला, पटवार वृत्त बूंगा, उप–तहसील सैंज, जिला कुल्लू के रिकार्ड में करवा दिया जाएगा।

आज दिनांक 04–04–2018 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
उप–तहसील सैंज, जिला कुल्ल, हि0 प्र0।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

रोशन लाल पुत्र श्री मोहर सिंह, निवासी गांव मातला, डा0 रोपा, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश ..... प्रार्थी।

बनाम

आम जनता

विषय.––हि0 प्र0 जन्म मृत्यु पंजीकरण अधिनियम की धारा 13(3) के तहत ग्राम पंचायत रिकार्ड में नाम व जन्म तिथि की प्रविष्टि बारे।

सर्वसाधारण को सूचित किया जाता है कि रोशन लाल पुत्र श्री मोहर सिंह, निवासी गांव मातला, डा0 रोपा, उप–तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश ने अधोहस्ताक्षरी की अदालत में एक दरख्वास्त गुजारी

है कि प्रार्थी की पुत्री का नाम मोनिका देवी जिस की जन्म तिथि 09–02–2013 है, ग्राम पंचायत सुचैहण के रिकार्ड में दर्ज नहीं है। ग्राम पंचायत सुचैहण के जन्म रजिस्टर में प्रार्थी की इस पुत्री का नाम मोनिका देवी व जन्म तिथि 09–02–2013 दर्ज करवाने बारे शपथ–पत्र भी दिया है कि ग्राम पंचायत सुचैहण के रिकार्ड में प्रविष्टि किया जावे।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि इस सम्बन्ध में किसी भी व्यक्ति को किसी प्रकार की आपत्ति हो तो वह असालतन या वकालतन अपनी आपत्ति इस न्यायालय में दिनांक 05–05–2018 या इससे पूर्व प्रस्तुत कर सकता है अन्यथा इसका इन्द्राज ग्राम पंचायत सुचैहण, उप–तहसील सैंज, जिला कुल्लू के रिकार्ड में करवा दिया जाएगा।

आज दिनांक 04–04–2018 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी
एवं कार्यकारी दण्डाधिकारी,
उप–तहसील सैंज, जिला कुल्लू, हि0प्र0।

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In the Court of Shri Raman Gharsanghi,(H.P.A.S.), Marriage Officer-cum-Sub-Divisional Magistrate, Manali, District Kullu, H.P.

In the matter of :

1. Sh. Stanzin Nyentak s/o Shri Tsewang Norbu, resident of Village Nungsted, Post Office Panamik, Tehsil Disket, District Leh J&K at present Gompa road Manali, Tehsil Manali, Distt. Kullu, H.P.

2. Tashi Palmo d/o Shri Ranjit Singh, resident of Village Seri Nagger, Post Office Karjan, Tehsil Manali, District Kullu, H.P. . . *Applicants.*

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 15 of Special Marriage Act, 1954.

Sh. Stanzin Nyentak and Tashi Palmo have filed an application on dated 28-03-2018 alongwith affidavits in the court of undersigned under section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on June 1980. Hence their marriage may be registered under Act, *ibid.*

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 27-04-2018. The objection received after 27-04-2018 will not be entertained and marriage will be registered accordingly.

Issued today on 28-03-2018 under my hand and seal of the court.

Seal.

RAMAN GHARSANGHI (HPAS),
Marriage Officer-cum-*Sub-Divisional Magistrate,*
Manali, District Kullu, H.P.

In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar, District Mandi, H. P.

In the matter of :—

1. Kushal Kumar Gupta s/o Sh. Jiwan Lal Gupta s/o Late Inder Gupta, r/o H. No. 311/5, Near by Ganpati Temple, Sain Mohala, Tehsil Sadar, District Mandi, H. P.

2. Yamini Gupta d/o Sh. Arun Kumar Gupta s/o Nand Lal Gupta, r/o House No. 361/4 Near by PWD Rest House, Bhojpur, Sunder Nagar, Tehsil Sunder Nagar, District Mandi, H.P.

. . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Kushal Kumar Gupta s/o Sh. Jiwan Lal Gupta s/o Late Inder Gupta, r/o H. No. 311/5, Near by Ganpati Temple, Sain Mohala, Tehsil Sadar, District Mandi, H. P. and Yamini Gupta d/o Sh. Arun Kumar Gupta s/o Nand Lal Gupta, r/o House No. 361/4 Near by PWD Rest House, Bhojpur, Sunder Nagar, Tehsil Sunder Nagar, District Mandi, H.P. (at present wife of Sh. Kushal Kumar Gupta s/o Sh. Jiwan Lal Gupta s/o Late Inder Gupta, r/o H. No. 311/5, Near by Ganpati Temple, Sain Mohala, Tehsil Sadar, District Mandi, H. P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 18-02-2018 according to Hindu rites and customs at their respective houses and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this

court on or before 03-05-2018 after that no objection will be entertained and marriage will be registered.

Issued today on 04th day of April, 2018 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).

In the Court of Sh. Mohan Datt Sharma, HAS, Sub-Divisional Magistrate, Theog, District Shimla, H. P.

Shri Bharat Singh Rathour s/o Late Shri Pritam Singh, r/o Village Challan, Gram Panchayat Kathog, Tehsi Theog, District Shimla, H.P. . . *Applicant.*

Versus

The General Public . . *Respondent.*

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas, Shri Bharat Singh Rathour s/o Late Shri Pritam Singh, r/o Village Challan, Gram Panchayat Kathog, Tehsil Theog, District Shimla, H.P. has moved an application stating therein that he could not register the birth of his daughter (Sangita Rathour D.O.B. 18-11-1985) in the record of Gram Panchayat Kathog, Tehsil Theog.

Whereas, by this proclamation, the general public is hereby informed that any person having any objection for these entries of the above mentioned name may submit his objection in writing in this court on or before 01-05-2018 failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 1st day of April, 2018.

Seal. Sd/-
Sub-Divisional Magistrate,
Theog, District Shimla.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है